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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1144

In Re NORTHWEST HOMES OF CHEHALIS, INC.,
Debtor,

THOMAS HANSEN, Receiver of NORTHWEST HOMES OF CHEHALIS, INC.,
Petitioner,

v.

WEYERHAEUSER COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHARLES R. EKBERG
Attorney for Petitioner

LANE, POWELL, MOSS & MILLER
Of Counsel

Office and Post Office Address:
1700 Washington Bldg.
Seattle, Washington 98101

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v.

WEYERHAEUSER COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner prays that a Writ of Certiorari issue to the United States Court of Appeals for the Ninth Circuit to review the judgment of that court entered on November 18, 1975. The judgment reversed an order of the District Court for the Western District of Washington affirming the decision of the Referee in Bankruptcy holding the Washington statute authorizing the issuance of a prejudgment writ of attachment of real property without no-

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tice or opportunity for hearing unconstitutional and the lien obtained by Respondent by virtue of the writ of attachment invalid.

OPINIONS BELOW

The opinion of the United States District Court, which adopted the opinion of the Bankruptcy Court, is reported at 363 F. Supp. 725 (WD Wash. 1973), and reproduced in the Appendix at page A-1.

The opinion of the United States Court of Appeals for the Ninth Circuit presented for review is not yet reported, but is reproduced in the Appendix herein at page A-10.

JURISDICTION

The judgment of the Court of Appeals was entered on November 18, 1975. The case was not argued before the Court of Appeals but was submitted solely on briefs.

This Petition for Certiorari is filed within 90 days of the entry of the judgment of the Court of Appeals. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that a writ of attachment, creating a lien upon real property, obtained by a creditor having no interest in the property, and without notice or an opportunity to be heard prior to the issuance of the writ does not violate the due process clause of the Fourteenth Amendment to the United States Constitution?

2. Did the Court of Appeals err in holding that post attachment hearing provided by RCW 7.12.270 is a suffi-

cient remedy to justify lack of prior notice and hearing where there is no requirement in the statute that the debtor be given notice of the attachment, even after it has been issued?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, Section 1, Constitution of the United States:

> . . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, . . .

STATUTES INVOLVED

The statute involved is Title 7, Chapter 12, Revised Code of Washington. The relevant provisions are lengthy and their pertinent text is set forth in the Appendix beginning at page A-14.

STATEMENT OF THE CASE

Northwest Homes of Chehalis, Inc. (Northwest), a Washington corporation, was engaged in the manufacture of modular housing units and had its corporate headquarters and principal place of business in Lewis County, Washington. It also owned numerous parcels of real property. In the course of its business it ordered supplies and materials from Weyerhaeuser Company (Weyerhaeuser), a nationwide producer of forest products, which has its corporate headquarters near Tacoma, Washington.

On February 19, 1971, Weyerhaeuser commenced an action for goods sold and delivered against Northwest in the Lewis County, Washington, Superior Court. A copy of

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the summons and complaint was served upon Northwest on February 22, 1971. On March 25, 1971, Northwest filed an answer to the complaint denying liability for the amount prayed for in the complaint. (Copies of the complaint and answer are reproduced in the Appendix beginning at page A-20.

On April 14, 1971, an attorney retained by Weyerhaeuser appeared before a deputy clerk of the Lewis County Superior Court, presented an affidavit and bond, and requested the clerk to issue a writ of attachment pursuant to RCW 7.12.020. The affidavit submitted in support of the writ recited the following grounds for the attachment:

> 1. That the defendant has, or is about to assign, secrete or dispose of property with intent to delay or defraud its creditors.
>
> 2. That the defendant is about to convert its property, or a part thereof, into money for the purpose of placing it beyond the reach of its creditors.
>
> 3. The object for which the action is brought is to recover upon an express contract.

(Copies of the Affidavit and Writ are reproduced in the Appendix beginning at page A-24.) Since the statute required only that Weyerhaeuser present an affidavit alleging any one of the ten statutory grounds appearing in RCW 7.12.020, and provide evidence of sufficient bond, the clerk issued the writ directing the sheriff to attach the real property of Northwest. No facts in support of these allegations are required to be set out in the affidavit. Northwest was given no prior notice of the issuance of the writ, nor was there any hearing before any judicial officer of the court as to whether the writ should issue. No judicial

officer of the court even participated in the decision as to whether the writ should issue or even examined Weyerhaeuser as to whether there were any facts to support the conclusory grounds alleged in the affidavit. The Washington statute, RCW 7.12, does not require nor contemplate such notice, hearing or judicial participation.

On April 16, 1971, the sheriff executed the writ of attachment by simply recording his "Notice of Attachment of Real Property" (reproduced in Appendix at page A-26) and a copy of the Writ of Attachment in the Lewis County Auditor's office pursuant to RCW 7.12.130(1). The sheriff then filed his Return (reproduced in Appendix at page A-32) pursuant to RCW 7.12.300. Northwest was never given notice that the writ had been issued or executed, nor was any such notice required to be given to Northwest under the Washington statute. No property other than real property was attached. In all, twenty-nine parcels of real property in Lewis County were attached, including the real estate upon which Northwest's two manufacturing plants were situated. Both the issuance and execution of the writ of attachment were in compliance with the Washington statute.

On December 15, 1971, Northwest filed a petition to propose an Arrangement under Chapter XI of the Bankruptcy Act [11 U.S.C. §701 et seq.] in the United States District Court for the Western District of Washington. On the same day that court entered an order staying all lawsuits then pending against the debtor including Weyerhaeuser's suit in Lewis County Superior Court. Although trial in the lawsuit had been scheduled to commence in Lewis County on January 6, 1972, the case did not proceed

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to trial and no judgment was ever entered. Northwest continued in full possession of all of the property attached by Weyerhaeuser until January 26, 1972, when the Bankruptcy Court appointed a receiver, Petitioner's predecessor, to take possession of all of Northwest's property.

After recordation with the Lewis County Auditor, the writ of attachment became a lien upon Northwest's title to all real property attached and has been shown as such on all title reports covering the attached property issued since that time. When Northwest had an opportunity to sell one of the parcels of real estate subject to Weyerhaeuser's attachment, it was compelled to request Weyerhaeuser to release such realty from the lien, which request was granted. Since the Receiver's appointment, however, Weyerhaeuser's releases of its lien have been conditioned upon a transfer of its lien rights to the proceeds of sale, and thus the Receiver has been unable to use those funds in the administration of the debtor's estate.

This action was originally commenced by Northwest's Receiver, the Petitioner herein, on July 11, 1972 by an application to invalidate the lien of Weyerhaeuser and for a declaration that the lien was null and void because the writ was issued without notice or hearing to Northwest. Jurisdiction of the Bankruptcy Court was invoked pursuant to Bankruptcy Act Sections 2a.(7), [11 U.S.C. 11a.(7)]; 302, [11 U.S.C. 702]; 311, [11 U.S.C. 711]; 70a., [11 U.S.C. 110]; 368, [11 U.S.C. 768]; and 369, [11 U.S.C. 769]. Pursuant to an order of the Bankruptcy Court dated July 12, 1972, an order to show cause was directed to Weyerhaeuser to appear in August, 1972, for a hearing as to why the lien should not be declared null and void. To this order, Weyerhaeuser filed a response admitting that

no notice was given to the debtor prior to the issuance of the writ of attachment but denying the relief requested by the Receiver. The case was submitted to the Bankruptcy Court upon stipulated facts and upon the briefs of counsel. The Referee to whom the case was submitted was also the same Referee hearing all matters pertaining to the Chapter XI Arrangement proceedings of Northwest.

Without a trial, the Bankruptcy Court entered its Memorandum Decision on November 17, 1972, holding that the Washington statute was unconstitutional under the State of Washington and United States Constitutions; and that therefore the lien obtained by Weyerhaeuser was unenforceable. An order discharging the property from the lien was entered on December 4, 1972.

Weyerhaeuser filed a timely Petition for Review to the United States District Court for the Western District of Washington. The case was submitted upon simultaneous briefs and argued before the District Court sitting as an appellate court to review the decision of the Bankruptcy Court. The District Court affirmed the Bankruptcy Court's decision by order dated August 8, 1973. From that order, Weyerhaeuser filed a timely notice of appeal to the Circuit Court of Appeals for the Ninth Circuit, from whose judgment of reversal Petitioner now prays for review.

REASONS FOR GRANTING THE WRIT

I. Certiorari Should Be Granted To Review the Decision of the Ninth Circuit Court of Appeals Because This Case Presents Important Questions of Federal Constitutional Law Which Should Be Settled By This Court

A. *In Light of Recent Decisions of This Court, Can* McKay v. McInnes, *279 U.S. 820 (1929), Still Stand*

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For the Proposition That a Writ of Attachment, Creating a Lien Upon Real Property, Obtained by a Creditor Having No Prior Interest In the Property, Is Not a Deprivation of Property Within the Meaning of the Due Process Clause of the Fourteenth Amendment Requiring That the Debtor Be Given Notice and an Opportunity to Be Heard Prior to the Issuance of the Writ?

B. ***Is the Availability of a Post-attachment Hearing a Sufficient Remedy to Justify Lack of Prior Notice and Hearing Where No Notice of the Writ of Attachment Is Required to Be Given to the Debtor After the Writ's Issuance?***

II. Certiorari Should Be Granted To Resolve a Question of Federal Constitutional Law About Which There Is a Conflict Among the Federal Courts of the United States Sitting in the Various Circuits, To Wit: Is a Pre-judgment Writ of Attachment, Creating a Lien Upon Real Property a Deprivation of Property Within the Meaning of the Due Process Clause of the Fourteenth Amendment, Requiring Notice and Prior Opportunity for Hearing Before the Writ May Issue?

ARGUMENT

I. Certiorari Should Be Granted to Review the Decision of the Ninth Circuit Court of Appeals Because This Case Presents Important Questions of Federal Constitutional Law Which Should Be Settled by This Court

A. ***In Light of Recent Decisions of This Court, Can* McKay v. McInnes, *279 U.S. 820 (1929), Still Stand for the Proposition That a Writ of Attachment, Creating a Lien Upon Real Property, Obtained by a Creditor Having No Prior Interest In the Property, Is Not a Deprivation of Property Within the Meaning of the Due Process Clause of the Fourteenth Amendment Requiring That the Debtor Be Given Notice and an Opportunity to Be Heard Prior to the Issuance of the Writ?***

This case does not present a novel factual situation. However, the issues created by this case present important

questions of federal constitutional law which, in light of recent decisions of this Court, warrant examination by this Court. By the use of a rather commonpalce remedy, Weyerhaeuser was able to obtain a lien upon 29 parcels of real property of Northwest in Lewis County, Washington. This lien is equivalent to having a mortgage placed upon a debtor's property with the exception that in this case, Northwest never consensually agreed to allow Weyerhaeuser to secure a lien upon its property.

Since this Court's decision in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), other occasions for reviewing the constitutionality of statutes authorizing prejudgment creditor remedies have arisen in this Court. In two of these cases, *Sniadach, supra,* and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975), the statutes in question allowed the prejudgment garnishment of wages and bank accounts in which the garnishing creditors had no prior interest. In *Fuentes v. Shevin*, 407 U.S. 67 (1972), and *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974), the creditors already had an interest in the property which they were attempting to secure prior to judgment.

It is not clear from the Court's decisions whether there is significance in the fact that the creditor has a prior interest in the debtor's property in determining whether notice and an opportunity for hearing must precede issuance of the writ authorizing seizure of the property. It is important to note that in *Mitchell v. W. T. Grant Co.*, this Court indicated:

> Plainly enough this is not a case where the property sequestered by the court is exclusively the property of the defendant debtor. *The question is not whether a debtor's property may be seized by his creditors,*

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pendente lite, where they hold no present interest in the property sought to be seized.

Id. 416 U.S. at 412. (Emphasis supplied). This case presents exactly the question which the Court in *Mitchell* indicated was not before it. Although both *Sniadach* and *North Georgia Finishing, Inc.* dealt with cases where the creditor had no prior interest in the property, it is submitted that this is one factor which this Court should consider in determining whether prior notice and an opportunity for a hearing should precede the issuance of process to obtain seizure of debtor's property. This is not a case involving the filing of a materialman or mechanic's lien upon real property (*Cf. Spielman-Fond, Inc. v. Hanson's, Inc.*, 379 F. Supp. 997 (Dist. Ariz. 1973), *aff'd*, 417 U.S. 901 (1974)), where arguably the creditor obtaining the lien has a nexus with the property liened. In this case, Weyerhaeuser served simply as the seller of fungible goods upon open account. The products purchased from Weyerhaeuser were used in Northwest's plant in connection with its manufacture of modular housing units. Northwest, therefore, had no reason to expect when this suit was filed in Lewis County Superior Court that Weyerhaeuser would attempt to secure a lien upon Northwest's property, because the prior conduct of the parties did not relate to specific properties.

In none of the decisions of this Court since *Sniadach* has the Court addressed itself to the issue of whether a writ of attachment securing a lien upon real property is a deprivation of property within the meaning of the Fourteenth Amendment so as to require that notice and an opportunity be given to the debtor prior to the issuance

of the writ. Confusion in this area, evidenced by conflicting decisions rendered by federal courts (see part II *infra*), rests with the decision of this Court in *McKay v. McInnes*, 279 U.S. 820 (1929). In that case, the Court affirmed the decision of the Maine Supreme Court in *McInnes v. McKay*, 127 Me. 110, 141 A. 699 (1928), which had upheld the Maine statute authorizing a creditor to attach real property of his debtor at the institution of a suit. However, in *McKay v. McInnes, supra*, the judgment of the Maine Court was affirmed without opinion citing only *Ownbey v. Morgan*, 256 U.S. 94 (1921), and *Coffin Bros. & Co. v. Bennett*, 277 U.S. 29 (1928). When the opinion of the Supreme Court of Maine in *McKay* is considered along with the summary opinion of this Court in that case and the pronouncements upon that case's vitality in later cases, it is clear that the United States Supreme Court's decision in *McKay* is worthy of reexamination and explanation if prejudgment writs of attachment securing liens upon real property are to be considered valid.

In the Maine Court's decision in *McInnes v. McKay, supra*, it is interesting to note that the Maine Court recognized that "a deprivation of property" within the meaning of the Fourteenth Amendment does not require an actual physical taking of property, but takes place when free use and enjoyment thereof or the power to dispose of it at will is affected. Although the Maine Court admitted that an attachment of real estate may deprive one of property, its conclusion that an attachment did not rise to the magnitude of a constitutional deprivation was because the deprivation was conditional and temporary, and hence, did not depend upon the property interest involved.

This Court's opinion in *McKay v. McInnes*, 279 U.S. 820 (1929), indicates only that the case is affirmed upon the basis of the Court's decisions in *Ownbey v. Morgan, supra,* and *Coffin Bros. & Co. v. Bennett, supra,* cases where the attachments involved were used to acquire *in rem* jurisdiction and to protect the public against a pending bank failure, circumstances which have later been characterized as "extraordinary situations" necessary to secure an important governmental or general public interest. See, *Fuentes v. Shevin*, 407 U.S. at 91, n. 23. In *Sniadach v. Family Finance Corp.*, *McKay* was cited for the proposition that a procedural rule may satisfy due process for attachments in general. *Sniadach*, 395 U.S. at 340. In *Fuentes v. Shevin, supra,* the court indicated that *McKay* could not stand for any more than was established in *Coffin Bros.* and *Ownbey* upon which it completely relied. *Fuentes*, 407 U.S. at 91, n. 23. Therefore, if *Ownbey* and *Coffin Bros.* are cited as examples of "extraordinary situations" allowing the seizure of property prior to a notice and an opportunity to be heard, the significance of *McKay* in establishing a rule for attachments of real property in general becomes diminished.

Balanced against these readings of *McKay* are other statements of this Court in subsequent cases. The Court has indicated that the Fourteenth Amendment protects such temporary and non-final deprivations of property which led the Maine Court in *McInnes v. McKay, supra,* to conclude that its prejudgment attachment statute did not suffer from constitutional infirmities. In *Fuentes*, this Court indicated:

> But it is now well settled that a temporary, nonfinal deprivation of property is nonetheless a "deprivation"

> in the terms of the Fourteenth Amendment. Sniadach v. Family Finance Corp., supra; Bell v. Burson, supra.

Fuentes v. Shevin, 407 U.S. at 84-85 (1972). *Fuentes* also made it clear that the type of property interest involved is not controlling in determining whether due process requires notice and an opportunity to be heard before a creditor can use the state's machinery to summarily seize his debtor's property:

> This reading of Sniadach and Goldberg [*Goldberg v. Kelly*, 397 U.S. 254 (1969)] reflects the premise that those cases marked a radical departure from established principles of procedural due process. They did not. Both decisions were in the mainstream of past cases, having little or nothing to do with absolute 'necessities' of life but establishing that due process requires an opportunity for a hearing before the deprivation of property takes effect . . . [citations omitted] . . . In none of those cases did the court hold that this most basic due process requirement is limited to the protection of only a few types of property interests. While Sniadach and Goldberg emphasized the special importance of wages and welfare benefits, they did not convert that emphasis into a new and more limited constitutional doctrine.

Fuentes v. Shevin, 407 U.S. at 88-89. In *North Georgia Finishing, Inc. v. Di-Chem, Inc., supra*, this Court reaffirmed this basic principle when it stated:

> We are no more inclined now than we have been in the past to distinguish among different kinds of property in applying the Due Process Clause. *Fuentes v. Shevin*, 407 U.S. at 89-90.

Id. 419 U.S. at 608. Thus, if the type of property interest involved is not controlling and if the situation is not one presenting an "extraordinary situation", what is the significance of this Court's summary affirmance in *McKay v. McInnes*?

It is also submitted that obtaining a lien by virtue of a writ of attachment is a deprivation of property within the meaning of the Fourteenth Amendment such as to require notice and an opportunity to be heard prior to the issuance of the writ. Although an attachment of real property may not deprive a person of actual physical possession and use of the property, it still imposes restraints upon other rights incident to the ownership of property such as the power to freely alienate the property. As this Court stated in *Buchanan v. Warley*, 245 U.S. 60 (1917):

> Property is more than the mere thing which a person owns; it includes the right to acquire, use and dispose of it; and the constitution in the Fourteenth Amendment protects these essential attributes.

Id. 245 U.S. at 74. Since the definition of property is a matter of state law, *Mitchell v. W. T. Grant Co.*, 416 U.S. at 612, it is also important to look at the definition of property established by the Washington State Supreme Court which has stated:

> Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself.

Ackerman v. Port of Seattle, 55 Wn.2d 400, 409, 348 P.2d 664 (1960).[1]

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1. In *Thompson v. DeHart*, 84 Wn.2d 931, 530 P.2d 272 (1975), the Washington Supreme Court implied that an attachment of real property was a deprivation of a "significant property interest" but held that the facts of that case presented an "extraordinary situation" justifying issuance of the writ without prior notice and an opportunity to be heard. Petitioner does not quarrel with this holding under the facts presented in that case, but Petitioner does not agree that *Thompson* preserves the constitutionality of the statute on its face or as applied to the facts of this case where there were no facts in the record prior to issuance of the writ which could substantiate the existence of an"extraordinary situation".

The decision of the Court of Appeals below relied upon *Spielman-Fond Inc. v. Hanson's Inc.*, 379 F. Supp. 997 (D. Ariz. 1973), *aff'd* 417 U.S. 901 (1974), in holding that the lien obtained by the writ of attachment was not such a significant taking of property that prior notice and opportunity for hearing were required by the due process clause of the Fourteenth Amendment. The court in *Spielman-Fond* reasoned that the debtor was not deprived of the use and possession of the property nor prevented from selling the property although the lien might make selling more difficult. *Spielman-Fond v. Hanson's Inc.*, 379 F. Supp. at 999. Petitioner submits that this is a narrow view of the rights affected by an attachment lien, and, if the decision of the Court of Appeals below is permitted to stand, ignores other incidents of ownership of real property which have taken on added significance in today's financial world. For as this Court stated in *Snidach v. Family Finance Corp., supra*:

> A procedural rule that may satisfy due process for attachments in general, *See, McKay v. McInnes,* 279 U.S. 820, 73 L. Ed. 975, 49 S. Ct. 344, does not necessarily satisfy procedural due process in every case. The fact *that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern forms.*

Id. 395 U.S. at 340. (Emphasis supplied.) In the instant case, Weyerhaeuser's attachment lien appeared on all title reports issued with respect to property owned by Northwest in Lewis County, Washington. Before Northwest could sell or dispose of the property it was forced to request Weyerhaeuser to release its attachment from the parcel indicated. After the Receiver took possession of Northwest's property in the Chapter XI proceeding,

Weyerhaeuser's lien rights could only be removed from the property upon stipulation and agreement that they be transferred to the proceeds of sale, thereby prohibiting the Receiver from using those funds for operations of the debtor's business or preservation and protection of the debtor's assets. In essence, it simply amounted to securing a lien with one type of property rather than another. Since Weyerhaeuser could not have garnished funds representing the proceeds of sale, See, *North Georgia Finishing, Inc. v. Di-Chem, Inc., supra*; and *Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 511 P.2d 1002 (1973), it would appear incongruous that it could summarily assert a lien on the property from which the funds may have been derived. Therefore, although Northwest may never have been deprived of physical use and possession of its real property, the ability of Weyerhaeuser to restrain and condition Northwest's alienability of its property was as serious a deprivation as if the property had been physically removed.

Although theoretically a writ of attachment does not prevent the owner of the attached property from selling it, any purchaser would take subject to the lien of the writ and the seller would not be able to provide title insurance to the property unless the lien rights were satisfied. The lien created by the writ of attachment may adversely affect the owner's credit rating and, in addition, make it difficult or impossible for him to mortgage the property, thus impairing the market value and marketability of the real estate. Along with the great increase in transportation, communication and other phenomena of the Twentieth Century it is no less true that a rule which might have satisfied purposes of the due process clause fifty years ago

may not obtain today where the ability to sell or pledge real property is as important to the debtor as his bank's promise to honor funds drawn on his bank account. In much the same way as Ms. Sniadach's wages and Di-Chem's bank account were essential to their operations, the real property of other debtors is just as important a consideration in determining whether the protection of the Fourteenth Amendment extends to provide notice and an opportunity to be heard before that interest may be infringed upon. Real property today has a far different significance than it did fifty years ago when ownership holdings were usually less diverse and corporations such as Northwest were likely to own only the property upon which they conducted their manufacturing activities.

B. ***Is the Availability of a Post-Attachment Hearing a Sufficient Remedy to Justify Lack of Prior Notice and Hearing Where No Notice of the Writ of Attachment Is Required to Be Given to the Debtor After the Writ's Issuance?***

The Court of Appeals below also placed reliance upon this Court's statement in *Mitchell v. W. T. Grant Co., supra,* that since under the Louisiana statute the debtor was entitled to an immediate hearing at which the creditor had the burden of justifying the issuance of the writ, the challenged procedure did not violate due process. Although it is true that RCW 7.12.270 allows the debtor whose property has been attached to move for dissolution of the writ, Petitioner submits that the hearing, coming after the writ is already issued, is an empty gesture which does not satisfy due process since no notice is required to be given to the debtor that the writ of attachment has been issued or executed. Obviously, in cases involving per-

sonal property this would cause little concern since the property is physically removed from the possession of the debtor. However, the fact that this case deals with real property, which is not physically removed, underscores the need for a hearing prior to issuance of the writ since the attachment is not immediately brought to the debtor's attention. Therefore, a question of substantial constitutional importance is presented in determining whether the mere availability of a post-attachment hearing is sufficient, even if the debtor receives no notice that the attachment occurred.

In *Mitchell v. W .T. Grant Co., supra,* it appeared that the writ of sequestration could only issue by a judge on the filing of an affidavit which clearly set forth the specific facts entitling the creditor to the issuance of the writ. Unlike the procedure utilized in Washington where the creditor need only appear before a ministerial official of the Court, usually a deputy clerk, and present only an affidavit setting forth conclusory grounds without having to set forth actual facts before the writ will issue, the Louisiana statutory scheme contemplated not only close judicial scrutiny of the process from beginning to end but also provided that the debtor receive notice of the writ at the time it was issued. See, *Mitchell v. W. T. Grant Co.,* 416 U.S., at 606, n. 7. In essence, Northwest was in no different position than the debtor in *North Georgia Finishing Inc., supra,* who was not even a party to the garnishment proceeding, since Northwest was not given any notice that a lien has been placed upon its property.

At the bare minimum, the due process clause requires "the opportunity to be heard", *Grannis v. Ordean,* 234

U.S. 385 (1914), and "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections", *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Thus, the due process clause demands that a deprivation of life, liberty or property be preceded by a notice and opportunity for the hearing appropriate to the nature of the case. *Mullane*, 339 U.S. at 313. Moreover, this opportunity must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Although it is true that Northwest had notice of the pendency of the Superior Court action, there is nothing upon the face of the Summons and Complaint served upon Northwest which would indicate to it that the plaintiff was seeking a writ of attachment or would do so at any later time. Northwest was a Washington corporation having its principal place of business in the county where the writ of attachment was issued. It had already served its Answer upon the plaintiff at the time the writ had been issued and thus, plaintiff was in no doubt as to whether Northwest was represented in the action and had denied liability for the claim. However, there is no provision in the Washington statute which provides that notice of the writ be served upon the defendant after its issuance. There is not even a requirement that the sheriff post notice that the writ has issued at a conspicuous place upon the property which is attached. Therefore, there is never any notice to the debtor that his real property has been attached and thus, Petitioner submits that to simply rely upon the availability of a post-attachment hearing, where no notice that the writ

has issued is given to the debtor, is not a sufficient constitutional remedy.

Even if the debtor did receive notice of the writ and learned of the necessity for invoking the procedures authorized by RCW 7.12.270 for seeking dissolution of the writ, it is still not clear that the hearing authorized under the Washington statute meets the tests established by this court in *Mitchell* and *North Georgia Finishing*. It is significant to note that in *Mitchell*, where the creditor had to list specific grounds in his affidavit to support the writ, all the debtor needed to do was to apply for a hearing at which point the writ was dissolved unless the creditor could prove the grounds upon which the writ was issued, the existence of the debt, the lien and delinquency.

However, under Washington law there is no requirement that the creditor seeking the writ set forth any facts in support of the writ. He need only allege any one of the ten statutory grounds listed in RCW 7.12.020, which are phrased in such conclusory terms as the grounds recited in the affidavit filed in this case. See *Buob v. Ochs*, 33 Wn.2d 732, 207 P.2d 189 (1949). Since the allegation of only one of the ten statutory grounds is necessary for issuance of the writ, the fact that all of the alleged grounds except one have no basis in fact will not render the affidavit and writ issued thereon invalid. See, *Blackinton v. Rumpf*, 12 Wash. 279, 40 P. 1063 (1895), and *Bender v. Rinker*, 21 Wash. 663, 59 P. 503 (1899). To obtain dissolution of the writ under RCW 7.12.270 the initial burden is on the defendant whose affidavit in support of the dissolution must specifically and precisely show that there exists no grounds for attachment as alleged. *Fawkner, Currie*

& *Co. v. Sanitary Fish Co.*, 105 Wash. 88, 177 P. 708 (1919). In essence, the debtor must show the nonexistence of broad conclusory allegations. It is only then that the burden of proof shifts to the plaintiff to establish one or more of the grounds he has alleged in support of the writ. *Bender v. Rinker, supra.* Thus, under Washington law, not only need the creditor not set forth specific facts in support of his allegations for issuance of the writ, but also, he is not required to carry the burden of proof at the dissolution hearing unless and until the defendant's affidavits "specifically and precisely" show that no grounds exist for attachment as alleged. There is no requirement that the creditor prove the probable validity of the underlying claim. In fact, it may be true that the only ground upon which the creditor, such as Weyerhaeuser, could have substantiated its writ would have been that the action was one "upon a contract, express or implied" (RCW 7.12.020 [10]), a ground upon which the highest Washington court to decide the issue has ruled is not one justifying the issuance of a writ of attachment without notice and opportunity for prior hearing. *Lucas v. Stapp,* 6 Wn. App. 971, 497 P.2d 250 (1972).

II. Certiorari Should Be Granted To Resolve a Question of Federal Constitutional Law About Which There Is a Conflict Among the Federal Courts of the United States Sitting in the Various Circuits, To Wit: Is a Pre-judgment Writ of Attachment, Creating a Lien Upon Real Property, a Deprivation of Property Within the Meaning of the Due Process Clause of the Fourteenth Amendment, Requiring Notice and Prior Opportunity for Hearing Before the Writ May Issue?

Since the Supreme Court's decisions in *Sniadach, Fuentes, Mitchell* and even *North Georgia Finishing*, federal

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courts sitting in at least three circuits have reached contrary decisions on the issue of whether a debtor must receive notice and be given an opportunity to be heard before a lien is placed upon his real property by a writ of attachment, procured by a creditor having no prior interest in the property. Because of these conflicts among the circuits, Petitioner submits that this Court should grant this petition to resolve this issue.

The decision reached in this case by the Ninth Circuit Court of Appeals is in conflict with the decisions of three-judge District Courts convened in the First Circuit which have also been asked to decide the same issue. In *Gunter v. Merchants Warren National Bank*, 360 F. Supp. 1085 (D. Maine 1973), a three-judge District Court held that Maine statutes permitting pre-judgment attachment of real property violated the due process clause of the Fourteenth Amendment because there was no provision in the statute requiring that the debtor be given notice and an opportunity to be heard prior to issuance of the writ. However, unlike the Washington statute, a copy of the writ of attachment had to be served upon the defendant after its issuance. The Court held that the restriction on the power of alienation created by the attachment lien was a significant deprivation of property stating:

> A restriction on the power of a real estate owner to alienate his property is such a deprivation. A real estate attachment under Maine law, while not disturbing possession creates a lien on the property . . . [Citations omitted] . . . and effectively deprives the owner of his ability to convey a clear title while the attachment remains outstanding. 4 American Law of Property §18.84 (A. J. Casner e.d. 1952); 57 A.L.R. 1406-1408 (1928).

Id. 360 F. Supp. at 1090.

In *Clement v. Four North State Street Corporation*, 360 F. Supp. 933 (D. N.H. 1973), a three-judge District Court held that the New Hampshire attachment statute was violative of due process in permitting litigants to make prejudgment attachments of real estate without giving the owner prior notice or reasonable opportunity to be heard. In discussing the effect of the statute permitting prejudgment attachments of real property the Court stated:

> The effect of the New Hampshire law is the same as the Maine law; it authorizes a plaintiff to make an immediate attachment of a defendant's real estate upon the plaintiff's unsubstantiated assertion that he has a claim against the defendant for damages without any notice or opportunity for the defendant to be heard. This impairment of the right of an owner of real estate to have the unrestricted use of his property fails to meet even the minimum demands of due process.

Id., 360 F. Supp. at 935. The statute in question permitted the party whose property was attached to petition the Court for the release of the attachment upon the posting of adequate bond, or for its reduction or discharge. At the hearing, the burden of proof was on the party making the attachment to show that it was not excessive or unreasonable. Despite those statutory features, the court still found that because the real estate was encumbered at the discretion of one of the litigants for some period of time, perhaps days or months, before the defendant could obtain a judicial hearing, the fundamental constitutional infirmity remained.

In *Bay State Harness Horse Racing and Breeding Association, Inc. v. P. P. G. Industries, Inc.*, 365 F. Supp. 1299 (D. Mass. 1973), another three-judge District Court sitting in the First Circuit struck down the Massachusetts

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statutes permitting pre-judgment attachment of real property without prior notice or an opportunity to be heard, stating:

> [E]ven viewing the attachment as a nonpossessory lien . . . or as merely an encumbrance or cloud on the title, . . . the interest created by the attachment operates as a superior interest against subsequent purchasers, mortgagees, or attaching creditors, and thus restricts the owner's ability to sell or mortgage the property at its full value.

Id. 365 F. Supp. at 1304. The Court specifically addressed itself to the question of whether an attachment of real estate was "a deprivation of property" within the meaning given to the phrase in *Fuentes v. Shevin, supra.* After determining that such an attachment was a deprivation of property, the Court also found that none of the statutory procedures under which the writ had issued exemplified exceptional situations mandating issuance of the writ without notice and an opportunity for prior hearing.

This Court's decision in *North Georgia Finishing v. Di-Chem, Inc., supra,* has not resolved the confusion in this area. Following that decision, another three-judge District Court convened in the First Circuit has held that the attachment of real property is a deprivation of property requiring notice and an opportunity for hearing prior to the issuance of the writ. In *Terranova v. Avco Financial Services of Barre, Inc.,* 396 F. Supp. 1402 (D. Vermont 1975), the Court held that the Vermont statutes and rules which allowed a plaintiff, upon commencement of a suit, to attach the defendant's real estate without notice or prior opportunity for hearing and with no participation by the court or judge violated the due process clause of the Fourteenth Amendment. Although as a direct response to this

Court's decision in *Fuentes*, the Vermont Rules of Civil Procedure had been amended to provide for a notice and hearing prior to all possessory attachments, real estate attachments were conspicuously excluded from the notice and hearing requirements. However, even recognizing that there was both a quantitative and qualitative difference between possessory attachments and real estate attachments, the Court indicated that the legal significance of such distinction is less clear after this Court's statement in *North Georgia Finishing*:

> We are no more inclined now than we have been in the past to distinguish among different kinds of property in applying the Due Process Clause.

Id. 419 U.S. at 608. Therefore, it appears that even after this Court's latest decision in the area of creditors' pre-judgment remedies decisions of courts sitting in the First Circuit are in conflict with the decision reached by the Court of Appeals below.

In another post-*North Georgia Finishing* decision, a three-judge District Court convened in the Fourth Circuit has upheld the constitutionality of the North Carolina statute permitting pre-judgment attachment of real property. In *Hutchsion v. Bank of North Carolina*, 392 F. Supp. 888 (D. N.C. 1975), the court, although holding that an attachment of real property is a substantial deprivation of a significant property interest subject to the protection of due process clause, upheld the statutory procedure where it appeared that (1) the creditor must allege specific facts in his affidavit in support of the writ; (2) the writ is issued by an officer of the court possessing judicial authority; and (3) the debtor was served with notice of the writ after its issuance and was afforded an opportunity for an early

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hearing where the creditor had the burden of proving the grounds alleged in support of the writ. These essential factors are all missing in the Washington procedure upheld by the Court of Appeals below. If the decision of that court should be permitted to stand, it is submitted that further conflicts in the decisions of courts in the various circuits will continue to occur unless this Court resolves these issues. A resolution of these issues is urgently needed if legislatures and courts are to be able to provide the constitutional framework necessary to preserve any balance between the conflicting interests of creditors and debtors. As Mr. Justice Blackmun indicated in his dissent in *North Georgia Finishing, Inc. v. Di-Chem, Inc., supra,* this Court's decisions in the area of pre-judgment creditors' remedies have been "decided in a manner that leaves counsel in the commercial communities in other States uncertain as to whether their own established and long-accepted statutes pass constitutional muster with the wavering tribunal off in Washington, D.C." *Id.* 419 U.S. at 619.

CONCLUSION

For the reasons aforesaid, Petitioner respectfully prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

CHARLES R. EKBERG
Attorney for Petitioner

LANE, POWELL, MOSS & MILLER
Of Counsel

1700 Washington Building
Seattle, Washington 98101
Telephone (206) 223-7000

February 11, 1976

APPENDIX A

In the Matter of NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, Debtor.

No. 951-71B2.

United States District Court, W. D. Washington, at Seattle.

Aug. 8, 1973.

MEMORANDUM DECISION

An order has been entered adopting the stipulation of facts entered into between the Debtor's Receiver and the Respondent in this particular proceeding, Weyerhaeuser Company. From the stipulation, it appears that Weyerhaeuser claimed the Debtor owed it some $88,000 for goods sold and delivered during the year 1970, plus an additional $4,400-odd in delinquent charges, for a total of $92,000 and sued thereon in the Superior Court for the State of Washington in Lewis County. The Debtor denied that it owed the plaintiff anything. Thereafter, Weyerhaeuser caused to be issued a writ of attachment without prior notice to the Debtor nor hearing, pursuant to the Washington attachment statute, R.C.W. 7.12. On April 15, 1971, the Sheriff of Lewis County executed the writ by recording with the Lewis County Auditor a notice of attachment pursuant to the procedure prescribed in R.C.W. 7.12.030(1), which does not require such notice nor hearing. Trial of the issues was set for January 6, 1972. However, on December 15, 1971, the Debtor instituted these proceedings for an arrangement in Chapter XI of the Bankruptcy Act and on the same day an order was entered in the bankruptcy proceeding staying all lawsuits against the Debtor including that of Weyerhaeuser. This order is still in force. Weyerhaeuser, complying with this order, caused the trial date to be stricken and has not prosecuted said action further. The Debtor has at all times continued in possession of the foregoing property. As appears from the foregoing dates, the attachment lien accrued more than

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four months prior to the institution of the Chapter XI proceedings. The Debtor, in its bankruptcy schedule A-2(a), sets forth an indebtedness to Weyerhaeuser in the sum of $65,166.57. It is agreed that while the exact amount of the debt is in dispute, there is a substantial debt due from the Debtor to Weyerhaeuser. The attachment lien has been an encumbrance on the Debtor's title to the real estate and has been shown to be such on all title reports covering said property. Weyerhaeuser, on request of the Debtor, prior to these proceedings, released certain real estate subject to the attachment without insisting that its lien be transferred to the proceeds. Since the institution of the Chapter XI proceedings, Weyerhaeuser has released its lien, on request, authorizing the sale of real estate subject to the Court-imposed requirement that its lien be transferred to the proceeds of such sales.

The foregoing facts, centered as they are on a prejudgment attachment of real estate, focus on the issue of whether or not Sniadach v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969), and cases following it require invalidation of the Weyerhaeuser attachment lien. *Sniadach* declared a statute of the State of Wisconsin authorizing pre-judgment wage garnishments to be unconstitutional because it allowed the taking of property without notice and prior hearing thereby violating the due process clause of the 14th Amendment. *Sniadach* has had a marked influence and in a relatively short period of time has been extended into other areas by State and Federal Courts. The Supreme Court of California, in the course of a considered and analytical opinion, Randone v. Appellate Department of the Supreme Court of Sacramento County, 5 Cal.3d 536, 96 Cal.Rptr. 709, 488 P.2d 13, 20 (1971), notes:

> ". . . the liberal application that had been accorded the *Sniadach* principle in a wide variety of contexts outside of wage garnishment . . ."

In a footnote to this statement, a number of State and Federal cases are cited showing the application of *Sniadach* to various kinds of property subjected to seizure without requisite notice or hearing, e.g., termination of welfare payments, seizure by innkeeper, confession of judgment,

repossession of residence, landlord's distraint of tenants' possessions, seizure by hospital, imprisonment of debtor, termination of employment, and appointment of committee to manage incompetent's property.

It is evident that *Sniadach* and the Courts influenced by it have in no small measure been affected by the view that there is a fundamental unfairness in certain institutionalized processes which have afforded those with knowledge thereof a pre-trial or prehearing advantage over an adversary whose ability to contest was weak to begin with. The United States Supreme Court, recently, in Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556, decided June 12, 1972, continued this concept, albeit, with a divided Court, and held unconstitutional Florida and Pennsylvania prejudgment replevin statutes. In the Florida case, Mrs. Fuentes had purchased on a conditional sale contract from Firestone a gas stove and stereo phonograph which were summarily replevied when she refused further payments because of a dispute over servicing the stove. In one of the Pennsylvania cases, a former husband of the appellant, in the course of a child custody dispute, used the replevin process to order seizure of the child's clothes, furniture, and toys. *Fuentes* appears to further the foregoing hypothesis of adjusting disparate capabilities for contest but it also states an additional and substantial dimension (407 U.S. p. 67, 92 S.Ct. p. 1983, 32 L.Ed.2d p. 574):

> "This reading of *Sniadach* and *Goldberg* reflects the premise that those cases marked a radical departure from established principles of procedural due process. They did not. Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute 'necessities' of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect. (Citing a number of cases). In none of those cases did the Court hold that this most basic due process requirement is limited to the protection of only a few types of property interests. While *Sniadach* and *Goldberg* emphasize the special importance of wages and welfare bene-

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> fits, they did not convert that emphasis into a new and more limited constitutional doctrine.
>
> Nor did they care about a rule of 'necessity' for the sort of nonfinal deprivations of property that they involved. That was made clear in Bell v. Burson, supra, holding that there must be an opportunity for a fair hearing before mere suspension of a driver's license. A driver's license clearly does not rise to the level of a 'necessity' exemplified by wages and welfare benefits. Rather, as the Court accurately stated, it is an 'important interest,' . . . entitled to the protection of procedural due process of law . . .
>
> No doubt, there may be many gradations in the 'importance' or 'necessity' of various consumer goods. Stoves could be compared to television sets, or beds could be compared to tables. But if the root principle of procedural due process is to be applied with objectivity, it cannot rest upon such distinctions. The Fourteenth Amendment speaks of 'property' generally. And, under our free enterprise system, an individual's choices in the marketplace are respected, however unwise they may seem to someone else. It is not the business of a court adjudicating due process rights to make its own critical evaluation of those choices and protect only the ones that, by its own likes, are 'necessary'."

It would appear then, that the path running from *Sniadach* to *Fuentes* is not to be followed on the basis of discrete application to particular subjects but whether or not the procedure measures up to a constitutional standard without regard to what that procedure has sequestered. Carrying forward the reasoning of the Court, one man's luxury may be another's necessity. Further, who is to say that an economic enterprise, as distinguished from an individual does not have its necessities? If law is to have general application then the wages of a president of General Motors should be no more subject to prejudgment garnishment than were those of Sniadach. In *Randone*, the garnishment was levied against Mr. *Randone's* bank account. He had been doing business as *Randone* Trucking and had failed to pay a bill of $490 to his lawyers. The

garnishment impounded the sum of $176.20. Again, one would assume that were the bank account of any business impounded by a writ of garnishment sued out without prior notice and hearing, it would likewise be subject to invalidation.

However, there are certain cases which do require examination, particularly McKay v. McInnes, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975 (1929), which, in a per curiam opinion, held that a prejudgment attachment of real property and shares of stock was not unconstitutional. This case was referred to in *Sniadach* by Justice Douglas (395 U.S. p. 340, 89 S.Ct. p. 1822) in the following context:

> "A procedural rule that may satisfy due process for attachments in general, see McKay v. McInness . . . does not necessarily satisfy due process in every case . . ."

Mr. Justice Harlan, in concurring with the majority, stated (p. 343, 89 S.Ct. p. 1823):

> ". . . Apart from special situations, some of which are referred to in this Court's opinion, see *ante*, at 339, [89 S.Ct. at 1821], I think that due process is afforded only by the kinds of 'notice' and 'hearings' which are aimed at establishing the validity, or at least the probable validity, of the underlying claims against the alleged debtor *before* he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court (citing cases). And I am quite unwilling to take the unexplicated *per curiam* in McKay v. McInness, as vitiating or diluting these essential elements of due process."

The California Supreme Court, in the *Randone* case, also was troubled by *Sniadach's* reference to *McKay,* particularly since the plaintiff had placed substantial reliance on the *McKay* case. In a footnote at p. 23, of 488 P.2d, the Court stated:

> "Although the majority in *Sniadach* acknowledged the existence of this prior decision, a substantial number of courts have found the vitality of *McKay* substantially impaired by the holding of *Sniadach.* (Citing

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> cases.) And Justice Harlan, in his concurrence of *Sniadach,* rather explicitly indicated that *McKay* could not survive the *Sniadach* decision . . . In view of (1) the unexplicated nature of the *McKay* opinion (2) the carefully limited authority on which the decision was directly based . . . and (3) the irreconcilable conflict between the principles underlying *Sniadach* and *McKay's* purported holding, we believe this 40-year old *per curiam* opinion is too thin a reed to support the reliance plaintiff has cast upon it."

The Washington State Court of Appeals has joined in the substantial number of cases following *Sniadach.* In Lucas v. Stapp, 6 Wash.App. 971, 497 P.2d 250 (1972), Lucas attached Stapp's car for an auto repair bill of $376.-37. The writ was issued pursuant to Washington attachment statute R.C.W. 7.12. The Court stated:

> "The sole question in the case is whether a portion of the Washington attachment statute, RCW 7.12.020 which authorizes seizure of property before judgment on a contract action is in conflict with the due process clause of the fourteenth amendment of the United States Constitution and article 1, section 3 of the Washington State Constitution . . .
>
> The attachment statute does not provide for a hearing, and Stapp did not receive any notice nor did he have the opportunity to be heard prior to the seizure of his property. Before entry of judgment in the main action, he could only recover his property by settling with Lucas or posting a redelivery bond . . ."

The Court, at page 974, 497 P.2d at page 251, stated:

> "Prior to *Sniadach,* McKay v. McInness, 279 U.S. 820, [49 S.Ct. 344, 73 L.Ed. 975] . . . in a per curiam opinion, affirmed a ruling that a prejudgment attachment of real property and shares of stock in a contract action was not violative of due process. *McKay* was based upon Coffin Bros. & Co. v. Bennett, 277 U.S. 29, [48 S.Ct. 422, 72 L.Ed. 768] . . . which held that a state officer could attach a stockholder's assets without a hearing after a bank failure, and Ownbey v. Morgan, 256 U.S. 94 [41 S.Ct. 433, 65 L.Ed. 837] . . .

which held that the sovereignty of each state permits seizure of a nonresident's property to secure jurisdiction.

The principle of *Sniadach* that summary proceedings should not be used in a case which presents no situation requiring a special protection to a State or creditor interest was carried into Boddie v. Connecticut, 401 U.S. 371, [91 S.Ct. 780, 28 L.Ed.2d 113] (1971) . . . a divorce action, wherein the Court said: That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, . . .

In *Randone* . . . there was a petition to discharge a prejudgment writ of attachment of a checking account. *The California Supreme Court pointed to the irreconcilable conflict between Sniadach . . . and McKay . . . and noted that the 40-year-old per curiam opinion in McKay was 'too thin a reed' to support the plaintiff's position.* (emph. supp.)

The affidavit of Lucas presents a commonplace rather than an extraordinary situation. Stapp was deprived of a 'significant property interest,' possession of his automobile, through a summary administrative proceeding in which he had no part. The fact that he could regain possession by acceding to the monetary demands of Lucas or by posting a redelivery bond does not alter the character of that deprivation."

Thus *Stapp* seems to have followed *Randone* in detaching the present line of cases from *McKay* which might have supported at one time, the thesis that real estate may be subjected to a prejudgment attachment without notice of hearing.

Logically, if the statute is found to be an unconstitutional act in a given situation, its infirmity will cause it to fail generally. The *Strapp* case holds that R.C.W. Chapter 7.12 is unconstitutional not only by virtue of the United States Constitution but also under the Washington State Constitution. In State ex rel. Evans v. Brotherhood of

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Friends, 41 Wash.2d 133, 247 P.2d 787, the Court, speaking to legislation authorizing slot machines, stated (p. 133, 143, 247 P.2d p. 793):

> "If a statute is unconstitutional, it is and has always been a legal nullity. The point is so well established that it should require no citation of supporting authorities . . .
>
> In Norton v. Shelby County, 118 U.S. 425, 442, [6 S. Ct. 1121, 30 L.Ed. 178], . . . the United States Supreme Court, speaking through the eminent Mr. Justice Field, said: 'An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.' . . ."

Lucas v. Stapp was followed in Seattle Credit Bureau v. Hibbitt, 7 Wash.App. 219, 499 P.2d 92 (1972). The defendant in that case had purchased tires, wheels and brake linings having given security agreements to Firestone Stores, the seller; on default, Firestone assigned the agreements to the plaintiff. The Seattle Credit Bureau caused the issuance of a writ of attachment pursuant to R.C.W. 7.12, seizing the vehicle on which the merchandise was installed. The Washington Court of Appeals held this process unconstitutional under the United States and Washington Constitutions citing *Lucas, Sniadach and Fuentes.*

The post-*Sniadach* cases cited as validating prejudgment attachments of real estate without notice of hearing are Robinson v. Loyola Foundation, 236 So.2d 154 (Fla. App.), and Black Watch Farms, Inc. v. Dick, 323 F.Supp. 100 (D.C.Conn. 1971). These cases, in the Court's view, are not in accord with the great weight of authority. Moreover, each of these cases is attended by individual circumstances limiting their authority as precedent. The *Black Watch* case involved a plaintiff, suing for some 4.5 million dollars, subjecting to attachment property which was already subject to prior liens and encumbrances of some 22 million dollars. The Court, while upholding the prejudgment attachment, further stated that by virtue of these prior liens and encumbrances, the additional temporary restraint visited upon the property had to be considered

as *de minimis*. In the *Robinson* case, the Court pointed out that the issue of constitutionality was not raised at all in the lower court and while conceding that it was constrained to consider the issue of unconstitutionality even though it was raised for the first time on appeal, gave the appellant short shrift in this area by simply stating that it would consider *Sniadach* as confined to its subject matter, ie., wages. Time has demonstrated that this evaluation of *Sniadach* is incorrect.

Some argument is made of the fact that the lien by way of attachment is not possessory and therefore does not amount to a seizure. However, there is not much question but what the attachment involves significant interference by the creditor with the Debtor's free use of the property. While possession is one of the incidents of ownership of real property, there are other facets which are of substantial nature; thus the attachment of real estate can restrain the owner of the subject property from transforming it into money by sale or mortgage just as surely as the owner of a garnished bank account is restrained from transforming his bank's promise into cash.

The attachment statute is unconstitutional under State and Federal law and the writ acquired thereunder is therefore unenforceable.

Dated at Seattle, in said District, November 17, 1972.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In the Matter of NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Debtor.* ——— THOMAS HANSEN, *Receiver-Appellee,* v. WEYERHAEUSER COMPANY, *Creditor-Appellant.*	No. 73-2976 OPINION

[November 18, 1975]

Appeal from a judgment of the United States
District Court for the Western District
of Washington

Before: KOELSCH and DUNIWAY, Circuit Judges,
and MURPHY,* District Judge

MURPHY, Senior District Judge:

The issue on this appeal is whether the Washington attachment statute (RCW 7.12 *et seq.*) is unconstitutional within the meaning of the due process clause of the Fourteenth Amendment. The parties stipulated all the facts as follows. That Weyerhaeuser sued Northwest Homes of Chehalis, Inc. for goods sold and delivered. After an answer was filed denying the debt, Weyerhaeuser secured a writ of attachment commanding the sheriff of Lewis County to attach all of the defendant's property in the county as security for any judgment it might recover. The

*The Honorable Thomas F. Murphy, Senior United States District Judge for the Southern District of New York, sitting by designation.

defendant was given no prior notice of the issuance of the writ, nor was there any judicial hearing on whether the writ should issue. The Washington attachment statute (RCW Ch. 7.12) does not require notice or hearing. The sheriff executed the writ by recording his "Notice of Attachment of Real Property" and a copy of the aforesaid writ of attachment in the Lewis County Auditor's Office pursuant to RCW 7.12.130(1). No property other than the real estate was attached. At no time did the issuance of the execution of the writ of attachment deprive the defendant of the ownership or the actual use or physical possession of the "attached property."

On December 15, 1971, more than four months after the attachment issued, the defendant instituted proceedings under Chapter XI of the Bankruptcy Act, and the District Court ordered all lawsuits against the debtor stayed, including that of Weyerhaeuser. A receiver was appointed on January 26, 1972 and he took possession of the real property in question. In the bankruptcy proceedings the debtor admitted that it was indebted to Weyerhaeuser for goods sold and delivered in the amount of $65,166.57. Since the recording of the notice of attachment, the attachment lien has been an encumbrance on the debtor's title to the real estate involved.

The receiver applied to the referee for an order invalidating Weyerhaeuser's lien. The referee held the Washington statute unconstitutional and granted the receiver's motion. On Weyerhaeuser's appeal to the District Court, the referee's decision was affirmed.

We reverse on the authority of the summary affirmance by the Supreme Court of the decision of the three-judge district court in *Spielman-Food, Inc. v. Hanson's, Inc.*, 379 F.Supp. 997 (D.Ariz.1973), *aff'd* 417 U.S. 901 (1974). In *Hicks v. Miranda*, 43 U.S.L.W. 4857 (U.S. June 24, 1975), the Court had made it clear that a summary affirmance of a case within its appellate jurisdiction is a decision on the merits and is binding on the inferior federal courts until the Court tells them that it is not (43 U.S.L.W. at 4860).

Spielman-Fond is closely in point. There, the court held

that the filing of a mechanics' and materialmen's lien against real property is not such a significant taking of a property interest that prior notice and an opportunity to challenge the lien in a prior hearing are required by the due process clause of the Fourteenth Amendment. It reasoned that the debtor is not deprived of the use and possession of the property, nor is he prevented from selling that property, although the lien may make selling more difficult. "The liens do nothing more than impinge upon economic interests of the property owner." 379 F.Supp. at 999. In the case at bar, the only impact of Weyerhaeuser's notice of attachment on Northwest Homes' real property is exactly the same as the effect of the notice of lien in *Spielman-Fond*. In this case, as in that case, there was no substantial taking of property, and, accordingly, RCW 7.12 *et seq.* as applied in this case is not violative of due process of law under the Fourteenth Amendment or the Washington State Constitution.

Other decisions of the Supreme Court point toward the same result. In *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974), the Supreme Court, referring to *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and *Fuentes v. Shevin*, 407 U.S. 67 (1972), upon which appellee relies said:

> "• • • they merely stand for the proposition that a hearing must be had before one is finally deprived of his property and do not deal at all with the need for a pretermination hearing where a full and immediate post-termination hearing is provided. The usual rule has been '[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.'" 416 U.S. at 611.

Since the Louisiana sequestration statute in *Mitchell* entitled the debtor to an immediate hearing at which the creditor had the burden of justifying the issuance of the writ, the Court concluded that the challenged procedure comported with due process.

Washington also provides for an early hearing at which

the creditor is required to demonstrate that the writ was properly and regularly issued. See, RCW 7.12.270 *Cf., North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 607 (1975).

Reversed.

APPENDIX C

Chapter 7.12
ATTACHMENT

Section 7.12.010, Revised Code of Washington:

Time for granting. The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover.

Section 7.12.020, Revised Code of Washington:

Affidavit for Writ—Issuance of Writ—Grounds. The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or someone in his behalf, shall make and file with such clerk an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets), and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and either:

(1) That the defendant is a foreign corporation; or

(2) That the defendant is not a resident of this state; or

(3) That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or

(4) That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him; or

(5) That the defendant has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; or

(6) That the defendant has assigned, secreted or disposed of, or is about to assign, secrete or dispose of, any of his property, with intent to delay or defraud his creditors; or

(7) That the defendant is about to convert his property, or a part thereof into money, for the purpose of placing it beyond the reach of his creditors; or

(8) That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(9) That the damages for which the action is brought are for injuries arising from the commission of some felony; or

(10) That the object for which the action is brought is to recover on a contract, express or implied.

Section 7.12.060, Revised Code of Washington:

Attachment Bond. Before the writ of attachment shall issue the plaintiff, or someone in his behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the justice court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking, there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, with the sum specified in the bond or undertaking, over and above, all debts and liabilities, and property exempt from execution. No person not qualified to be-

come surety as provided by law, shall be qualified to become surety upon a bond or undertaking for an attachment: . . .

Section 7.12.070, Revised Code of Washington:

Additional Security. The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient, the attachment may be vacated, and restitution directed of any property taken under it, unless in a reasonable time, to be affixed by the court or judge, further security is given by the plaintiff in form as provided in RCW 7.12.060.

Section 7.12.080, Revised Code of Washington:

Action on bond—Damages—Attorney's fee. In an action on such bond the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond.

Section 7.12.090, Revised Code of Washington:

Contents of writ—Levy of attachment. The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require him to attach and safely keep the property of such defendant within his county, to the requisite amount, which shall be stated in conformity with the affidavit. The sheriff shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title

is doubtful or only equitable, and he shall as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in valuation than the amount plaintiff in his affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping the same as shall be reasonable and just.

Section 7.12.130, Revised Code of Washington:

Manner of executing writ. The sheriff to whom the writ is directed and delivered must execute the same without delay as follows:

(1) Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated. . . .

Section 7.12.170, Revised Code of Washington:

Custody of property or proceeds. All moneys received by the sheriff under the provisions of this chapter and all other attached property shall be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment.

Section 7.12.210, Revised Code of Washington:

Subjection of attached property to judgment. If judgment be recovered by the plaintiff the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this chapter provided or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

(1) By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold by him, or so much as shall be necessary to satisfy the judgment.

(2) If any balance remain due he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.

Notice of the sale shall be given and the sale conducted as in other cases of sales on execution.

Section 7.12.250, Revised Code of Washington:

Discharge of attachment—Restitution—Bond. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment or after the return thereof by the clerk to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action.

Section 7.12.270, Revised Code of Washington:

Motion to discharge attachment. The defendant may at any time after he has appeared in the action and before he has given bond to the effect that he will perform the judgment of the court, as provided in RCW 72.250, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

Sestion 7.12.280, Revised Code of Washington:

Hearing on motion—Affidavits. If the motion be made upon affidavits upon the part of the defendant but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was issued.

Section 7.12.290, Revised Code of Washington:

Discharge of writ for irregularity. If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged.

Section 7.12.300, Revised Code of Washington

Return of sheriff. The sheriff must return the writ of attachment with the summons, if issued at the same time, otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto, and whenever an order has been made discharging or releasing an attachment upon real property a certified copy of such order may be filed in the offices of the county auditors in which the notices of attachment have been filed and be indexed in like manner.

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

WEYERHAEUSER COMPANY, a Washington corporation, Plaintiff, vs. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, Defendant.	No. 30510 COMPLAINT FOR GOODS SOLD AND DELIVERED

COMES NOW your plaintiff, WEYERHAEUSER COMPANY, and alleges as follows:

I.

The plaintiff, WEYERHAEUSER COMPANY, is a Washington corporation whose principal place of business is in the Tacoma Building at 11th and A Streets in Tacoma, Washington. Its mailing address is Weyerhaeuser Company, Tacoma, Washington 98401. Its telephone number is (206) 383-3361.

II.

The defendant herein, NORTHWEST HOMES OF CHEHALIS, INC., is a Washington corporation with a principal place of business at 2800 South Market, Chehalis, Washington. Its mailing address is P. O. Box 478, Chehalis, Washington 98532.

Helmut Wallenfels
Attorney at Law
1210 Tacoma Bldg.
Tacoma, Washington 98402
(206) 383-3361, Ext. 1149

Its telephone number is (206) 748-4429.

III.

Defendant owes plaintiff EIGHTY-EIGHT THOUSAND THIRTY-NINE DOLLARS and TWENTY-THREE CENTS ($88,039.23) for goods sold and delivered by plaintiff to defendant in 1970.

IV.

In addition, defendant owes plaintiff, as of the date of this complaint, FOUR THOUSAND FOUR HUNDRED SEVEN DOLLARS and THIRTY-TWO CENTS ($4,407.32) in delinquency charges which accrued by reason of defendant's failure seasonably to pay plaintiff the purchase price of the aforementioned goods.

WHEREFORE, plaintiff demands judgment against defendant for the sum of NINETY-TWO THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS and FIFTY-FIVE CENTS ($92,446.55), such further delinquency charges as may have accrued by the time judgment is entered herein, and costs.

DATED this 19th day of February, 1971

Helmut Fallenleis
Attorney for plaintiff,
WEYERHAEUSER COMPANY
Room 1210, Tacoma Bldg.
Tacoma, Washington 98402
(206) 383-3351, Ext. 1149

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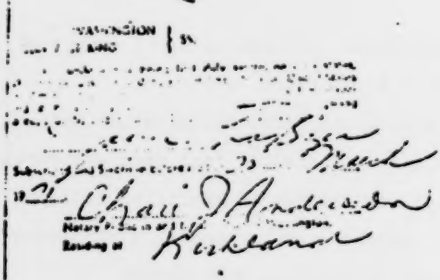
APPENDIX E

Exhibit E



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, Plaintiff, vs. NORTHWEST HOMES OF CHEHALIS, INC., Defendant.	NO. 30510 ANSWER TO PLAINTIFFS' COMPLAINT

THE DEFENDANT in the above entitled action does now answer Plaintiffs' complaint on file herein, and by way of denial alleges as follows:

I

Defendant admits the allegations contained in Paragraph I of plaintiffs' complaint.

II

Defendant admits the allegations contained in Paragraph II of plaintiffs' complaint.

III

The defendant admits that plaintiff has sold and delivered goods to the defendant during the year of 1970, but defendant emphatically denies that it owes the plaintiff $68,039.23 for such goods sold and delivered.

IV

The defendant denies the allegations contained in

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Paragraph IV of plaintiffs' complaint.

WHEREFORE, defendant having fully answered and denied the material allegations in plaintiffs' complaint, it does now pray that plaintiffs' complaint be dismissed herein and that defendant be awarded its costs and disbursements incurred in defense of this action.

DATED THIS 25th day of March, 1971.

KELLEHER & EAST

By: _____
GARY W. EAST
Attorney for Defendant

GWE:jl
3-25-71

APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR LEWIS COUNTY

WEY-HAUSER COMPANY, a Washington corporation,

Plaintiff,

vs

NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation,

Defendant.

No. 30570

AFFIDAVIT FOR ATTACHMENT

FILED
LEWIS COUNTY, WASH.
SUPERIOR COURT
APR 11 1971
MARGARET J. DONALDSON, Clerk
By

STATE OF WASHINGTON)
ss
COUNTY OF L E W I S)

J. D. SEARLE, being first duly sworn on oath, deposes and says: That he is an attorney for the Plaintiff in the above-entitled cause. That the Defendant, Northwest Homes of Chehalis, Inc., is indebted to the Plaintiff herein in the sum of $92,446.55 plus interest, late charges, and costs over and above all just credits and offsets. That he makes this affidavit to secure the issuance of a Writ of Attachment and that such writ is not sought and the action is not brought to hinder, delay, or defraud any creditor of said Defendant.

Affiant further states:

1. That the Defendant has, or is about to assign, secrete, or dispose of property with the intent to delay or defraud its creditors.

2. That the Defendant is about to convert its property, or a part thereof, into money for the purpose of placing it beyond the reach of its creditors.

3. That the object for which this action is brought is to recover on an express contract.

Subscribed and sworn to before me this 14 day of April, 1971.

Notary Public in and for the State of Washington, residing at Chehalis

J. D. SEARLE
BYRON A. ADAMS
Attorneys at Law
Post Office Box 1018
CHEHALIS, WASHINGTON
Telephone 748-9939

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APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, a Washington corporation,

Plaintiff,

vs

No. 5154

NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation,

Defendant.

WRIT OF ATTACHMENT

RECD & FILED
LEWIS COUNTY, WASH.
SUPERIOR COURT
MAY 26 '971
MARGARET I. DONALDSON, CLERK
By

STATE OF WASHINGTON TO THE SHERIFF OF LEWIS COUNTY, GREETINGS:

WHEREAS, a civil action, as above entitled, has been commenced in the aforesaid Court by the Plaintiff for recovery from the Defendant therein, in the sum of $92,446.55 plus interest, late charges, and court costs, and the necessary affidavit and undertaking therein has been filed as required by law.

NOW, THEREFORE, you are hereby commanded that you attach and take all of the property of said Defendant within your County, not exempt from execution, or so much thereof as may be sufficient as may be sufficient to satisfy said Plaintiff's demand, the amount thereof being as above stated, together with costs and expenses, and safely keep the same in your possession until the further order of the Court respecting the same, or it shall have been otherwise discharged according to law.

OF THIS WRIT MAKE LEGAL SERVICE AND RETURN.

Witness, the Honorable D. J. Cunningham, Judge of the Superior Court, and the seal thereof, this ____ day of April, 1971.

Margaret J. Donaldson
Clerk of Court

By: _____
Deputy

J. D. STARR
BYRON A. [illegible]

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A-20

APPENDIX H

corporation,

Plaintiff,

vs

NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation,

Defendant.

NOTICE OF ATTACHMENT OF REAL PROPERTY

FILED
LEWIS COUNTY, WASH.
SUPERIOR COURT
MAY 26 1971
MARGARET J. DONALDSON, Clerk
By

STATE OF WASHINGTON
County of Lewis.

Notice is hereby given that under and by virtue of a Writ of Attachment issued out of the Superior Court of Lewis, County, and State of Washington, of which the annexed writ is a true copy, I have this day attached all the right, title, claim and interest of NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation,

Defendant, of, in and to the following described real estate in Lewis County, State of Washington, standing on the records of Lewis County in the name of Northwest Homes of Chehalis, Inc., a Washington corporation, and particularly described as follows, to wit:

Lots 2, 3, 4 5, (Except the southerly 90 feet of Lot 5) 6, 7, 8, 9 and 12, Block 1,
Lots 1, 5, 6, 9, 10, 11 and 12, Block 2,
Olympic Addition, as per plat recorded in volume 5 of plats, pages 33 and 34, records of Lewis County, Washington.

Lots eight (8) and nine (9) Block seven (7), [illegible] ADDITION to the City of Chehalis, in Lewis County, Washington.

That part of the North half of the Northeast quarter of Section 13, Township 12 North, Range 2 East, W.M., in Lewis County, Washington, described as follows: Beginning at the Southeast corner of said Subdivision; thence North along the Section line, 69.9 feet to the Northerly line of Primary State Highway No. 5; thence South 69° 53' West 1249.6 feet; thence North 0° 17' West 70 feet to the true point of beginning; thence continuing North 0° 17' West 70 feet; thence North 69° 53' East 105 feet; thence South 0° 17' East 70 feet; thence South 69° 53' West 105 feet to the true point of beginning.

TOGETHER WITH an easement for ingress and egress described as follows: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter; thence South along the Section line 69.9 feet to the Northerly line of Primary State Highway No. 5; thence South 69° 53' West 1249.6 feet; thence North 0° 17' West 110 feet; thence South 69° 53' West 25 feet; thence North 0° 17' East 110 feet; thence North 69° 53' East 25 feet to the point of beginning.

That part of the North half of the Northeast quarter of [illegible], Township 12 North, Range 2 West, W.M., in Lewis [illegible], described as follows: Beginning at a point on the Northerly line of [illegible] 69.9 feet [illegible]

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[illegible] of Section 13, [illegible] 12 [illegible] 69.9 feet north of [illegible] corner of the northeast quarter of the [illegible] quarter of said Section; thence north [illegible]' west along said northerly line 1[illegible].3 feet; thence north [illegible] feet to the true point of beginning; thence south [illegible] feet; thence north 0°17' west 7[illegible] feet; thence north [illegible]' east 1[illegible] feet; thence south 0°17' east 7[illegible] feet to the true point of beginning. TOGETHER WITH an easement for ingress and egress over the following described tract: Beginning at the intersection of the east line of said Section and the north line of Primary State Highway No. 5; thence south 83°53' west along said Highway line 1[illegible] feet to the true point of beginning; thence north 0°17' west 1[illegible] feet; thence south [illegible]' west 25 feet; thence south 0°17' east 1[illegible] feet to the north line of said Highway; thence north 83°53' east 25 feet to the true point of beginning.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 83° 53' West along said North line 1219.8 feet to the True Place of Beginning; thence North 0° 17' West 240 feet; thence North 83° 53' East 130 feet; thence South 0° 17' East 240 feet to said North line; thence South 83° 53' West 130 feet to the True Place of Beginning.

SUBJECT TO:

1. Perpetual easement reserved by Rickard Russell and Rose Russell, husband and wife, their heirs and assigns, to cross and recross the North 30 feet of the above tract.

2. Transmission line easement in the United States of America recorded in Volume 321 of Deeds, page 389, records of the Auditor of Lewis County, Washington.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 83° 53' West along said northerly line 1059.8 feet to the True Place of Beginning; thence North 0° 17' West 210 feet; thence North 83° 53' East 260 feet; thence South 0° 17' East 210 feet to said North line; thence South 83° 53' West 260 feet to the True Place of Beginning.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 83° 53' West along said North line 1349.8 feet to the True Place of Beginning; thence North 0° 17' West 240 feet; thence North 83° 53' East 130 feet; thence South 0° 17' East 240 feet to the North line of said Highway; thence South 83° 53' West 130 feet to the True Place of Beginning.

SUBJECT TO transmission line easement in the United States of America recorded in Volume 321 of Deeds, page 389, records of the Auditor of Lewis County, Washington.

SUBJECT TO perpetual easement of Richard Russell and Rose Russell, husband and wife, their heirs, successors and assigns to cross and recross the North 30 feet of the above tract.

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28A

Commencing at a point on the north line of Lot 7, Centralia Boulevard Land Company's Acre Tracts, which point is 510 feet east of the northwest corner of said Lot, and running thence east along the north line of said Lots 7 and 8, of said Centralia Boulevard Land Company's Acre Tracts, 100 feet; thence south parallel with the west line of said Lot 7, 165 feet; thence west parallel with the north line of said Lots 7 and 8, 100 feet; thence north 165 feet to the place of beginning, being part of lots 7 and 8, Centralia Boulevard Land Company's Acre Tracts, in Lewis County, Washington.

That part of the north half of Tracts Seven (7) and Eight (8) of CENTRALIA BOULEVARD LAND COMPANY'S ACRE TRACTS, in Lewis County, [illegible]

That part of the north half of Tracts Seven (7) and Eight (8) of CENTRALIA BOULEVARD LAND COMPANY'S ACRE TRACTS, in Lewis County, Washington, described as follows: Beginning at the northwest corner of said Tract 7; thence south along the west line thereof, 135 feet; thence east parallel with the north line of said Tract 7, 312 feet; thence south parallel with the west line of said Tract 7, 201.7 feet, more or less, to the south line of said north half of said Tract 7; thence east parallel with the north line of said Tracts 7 and 8, to a point 150 feet east of the west line of said Tract 8; thence north parallel with the west line of Tract 8 to the north line thereof; thence west along the north line of said Tracts 7 and 8, to the point of beginning. EXCEPT: Beginning at a point on the north line of said Tract 7, 103.4 feet east of the northwest corner thereof; thence east along said north line 206.8 feet; thence south parallel with the west line of said Tract 7, 165 feet; thence west parallel with the north line of said Tract, 206.8 feet; thence north 165 feet to the point of beginning, and EXCEPT: Beginning at a point on the north line of said Tract 7, 312 feet east of the northwest corner thereof; thence east on the north line of Tracts 7 and 8, 100 feet; thence south parallel with the west line of Tract 7, 165 feet; thence west parallel with the north line of said Tracts 7 and 8, 100 feet; thence north 165 feet to the point of beginning; except easements and reservations, if any, of record; TOGETHER with such water rights as are owned by the sellers and that are applicable to the above described property, under the Certificate of Ground Water Rights dated Aug. 12, 1964, filed Aug. 15, 1964, as Auditor's File #534944 and recorded in Volume 30 of Misc. Records, page 103, Records of Lewis County, Washington.

Lot 8 and Lot 9, Block 7, [illegible] ADDITION to the City of Chehalis.

That part of Government Lot Three (3) in Section Thirty-two (32), Township Fourteen (14) North, Range Two (2) West of the Willamette Meridian, in Lewis County, Washington, described as follows: Beginning at the Northeast corner of Lot Three (3), Block Five (5) [illegible] Addition; thence North 27 degrees 24' East 30 feet to the True Point of Beginning; thence North 42° 36' West parallel with Adams Avenue 60 feet; thence North 47°24' East 120 feet; thence South 42°36' East 60 feet; thence South 47°24' West 120 feet to the True Point of Beginning, which parcel is also erroneously shown upon the plat of W. Tice's First Addition as Lot Two (2), Block Two (2), and also carried on the Lewis County Tax Roll as such.

A part of the Northeast quarter of the Northwest quarter (NE¼ NW¼) of Section Nineteen (19), Township Thirteen (13) North, Range Two (2) West of the Willamette Meridian, described as follows: Commencing at the Southeast corner of said Northeast quarter of the Northwest quarter (NE¼ NW¼); thence North along the East line of said Northeast quarter of the Northwest quarter (NE¼ NW¼) 370 feet; thence West 190 feet; thence South parallel to the said East line to the Weyerhaeuser right of way described in that certain easement dated March 5, 1959, recorded in Book 400 of Deeds, page 350, records of Lewis County Auditor; thence Southeasterly along the Northerly line of said right of way to the Point of Beginning.

Lot five (5), Block one (1), Fondersen Land Company's First Addition to the City of Chehalis, excepting [illegible] Ten (10) feet located in Lewis County, Washington.

Lot thirteen (13), Block one (1), [illegible] Addition to the city of Chehalis, less the North fifty (50) feet of the West one hundred twenty (120) feet,

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POOR COPY

COPY PRINTED CLOSE TO EDGE

The South 25 feet of Lot 12, Block 1, Richardt's Acre Addition to Chehalis, as recorded in Volume 1 of Plats, Page 140, in Lewis County, Washington, Except the West 200 feet thereof.
Also, Lot 10, Block 1, Richardt's Acre Addition to Chehalis,
Except the south 75 feet of the West 200 feet and Except the North 25 feet of the East 170 feet.

Lot seven (7), Block eight (8), Richardt's Acre Addition to the City of Chehalis.

[illegible] Lewis County, [illegible] the seller retains title and [illegible] the title.

[illegible] Lewis County, [illegible]

Beginning at the [illegible] corner of Lot 7; thence south along the east line of [illegible] feet; thence west 103.4 feet; thence north 125 feet, more or less, to the north line of [illegible]; thence east 103.4 feet to the point of beginning.

A part of the Northeast quarter of the Southwest quarter of Section thirteen (13), Township thirteen (13) North, Range two (2) West of the Willamette Meridian, described as follows:

13-13-2 WM

Beginning at a point on the Southerly line of the Pacific Highway, 376.0 feet West of the Northeast corner of said Subdivision; thence South 43° East, along said Highway, 50 feet; thence South 47° West, 112 feet; thence North 43° West, 225 feet; thence East 200 feet to the Place of Beginning, EXCEPT the North 20 feet thereof.

A part of government Lot 7, being the fractional southeast quarter of the southeast quarter of section 9, township 13 north, range 9 east, W. M., in Lewis County, Washington, described as follows:

Beginning at the southeast corner of said Lot 7; thence east, along the south line of said Lot 7, 417.4 feet; thence north 208.7 feet; thence west on a line parallel to said south line 417.4 feet; thence south 208.7 feet to the place of beginning.

Lots one (1) and two (2), Block three (3) PACKWOOD [illegible] STITES, together with that portion of the vacated alley between Lot one (1) and lots seven (7) and eight (8) attaching to said Lot 1 by operation of law, or otherwise.

Lots seven (7) and eight (8), Block three (3), PACKWOOD [illegible] STITES.

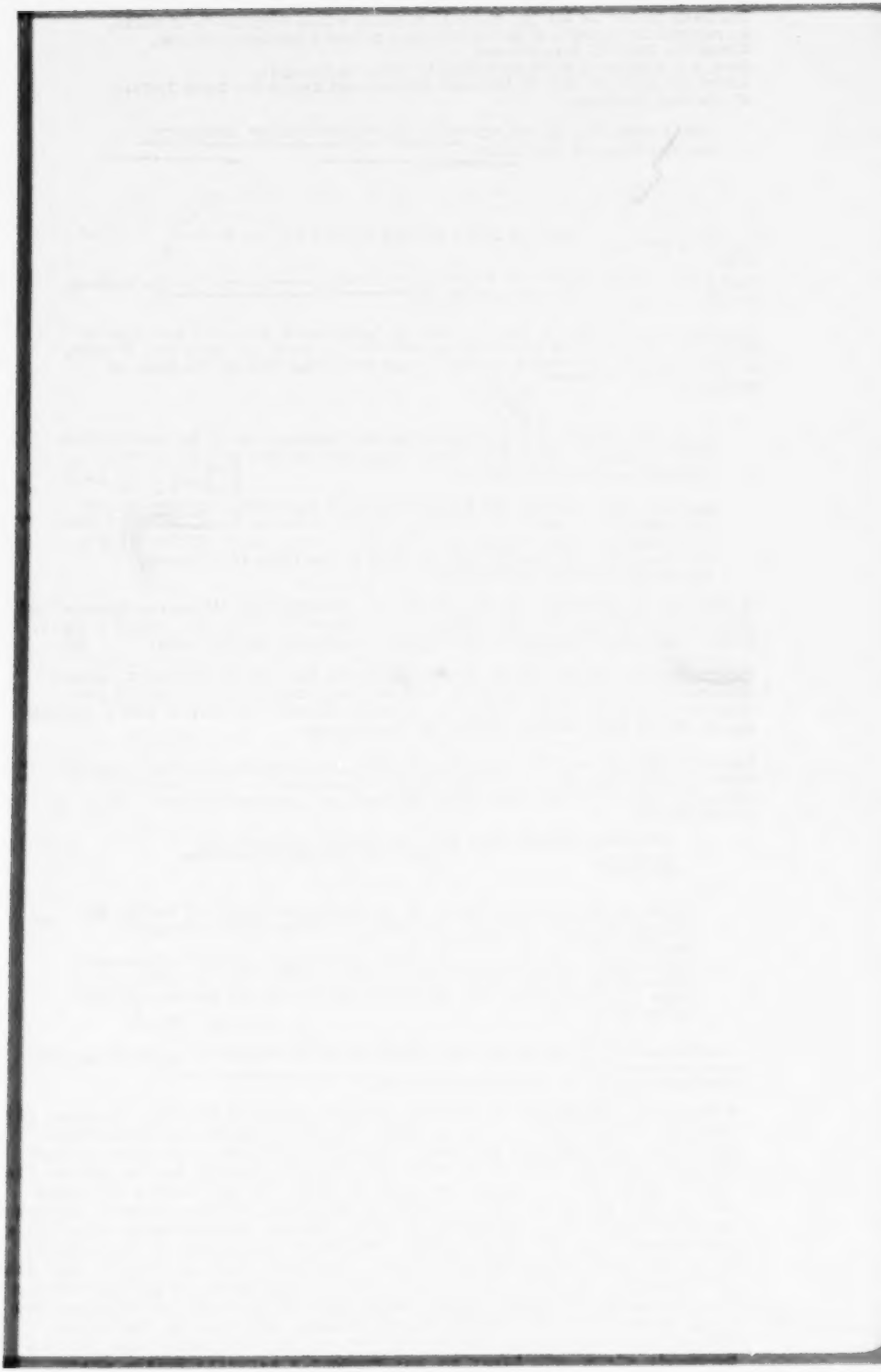
A part of the Southeast quarter of the Northwest quarter of Section 22, Township 13, North, Range 9 East, W.M., in Lewis County, Washington, described as follows:
Beginning at a point 651.1 feet North and 30 feet East of the Southeast corner of the Town of Lewis (now Packwood) running East 128 feet; thence South 100 feet; thence West 128 feet; thence North 100 feet to the Place of Beginning.

Lot fourteen (14) CHEHALIS LAND AND TRUST COMPANY'S SUBDIVISION of Block six (6) DOUGLAS' ADDITION to the City of Chehalis.

A tract of land in the Southwest quarter (SW¼) of Section thirteen (13), Township thirteen (13) North, Range one (1) East of the Willamette Meridian, described as follows: Commencing on the West line of said Section thirteen (13) where said line is intersected by the center line of Secondary State Highway 5K; thence North 42° 07' East along said center line 636 feet more or less to Engineers Station 267+00; thence at right angles Southeasterly 30 feet; thence Northeasterly parallel to said center line 400 feet to the TRUE POINT OF BEGINNING, said point being the most Northerly corner of a tract of land conveyed to the State of Washington by deed recorded in Book 255 of Deeds, page 597; thence Southeasterly, at right angles to the center line of said highway 200 feet; thence at right angles Northeasterly, parallel to the center

13-1

BLEED THROUGH



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[illegible]

That part of the Southwest quarter of the Southwest quarter (SW¼ SW¼) of Section eleven (11), Township twelve (12) North, Range seven (7) East of the Willamette Meridian, described as follows: Beginning at a point on the East line of the W. A. Young County Road, 200 feet North of the South line of said Subdivision; thence North along the East line of said Road, 100 feet; thence East 150 feet; thence South 100 feet; thence West 150 feet to the Place of Beginning.

A part of the Elkanna Mills Donation Land Claim, in Section Thirty-Three (33) Township Fourteen (14), North, Range Two (2), West, W. M., and in Section Four (4), Township Thirteen (13), North, Range Two (2), West, W. M., in Lewis County, Washington, described as follows:
Beginning at a point on the north line of said Donation Land Claim, 30.10 chains east of the northwest corner thereof; thence east 692.43 feet to a point; thence south 42°12' west 2270.4 feet to the former Pacific Highway, thence north 43°33' west 173 feet, thence north 66° west 213.12 feet, thence north 38° east 1913.2 feet, more or less, to the point of beginning.
EXCEPT Beginning at a point 2673.24 feet east of the northwest corner of said Donation Land Claim, which point is the northeast corner of the above described premises; thence south 42°12' west 2270.4 feet to the former Pacific Highway thence north 43°33' west 82.5 feet, thence north 42°12' east to the north line of said Donation Land Claim, thence east to the point of beginning.
AND EXCEPT any portion thereof lying within the right of way of the former Pacific Highway.

A tract of land situated in the Northwest Quarter of the Northwest Quarter of Section 10, Township 13 North, Range 2 West of WM. and described as follows:
BEGINNING at the Northwest corner of Section 10; thence North 89°38' East along the North line of said section 431.1 feet; thence South 0°20'11" East parallel to the West line of said Section 1324.0 feet; thence South 89°38' West 431.1 feet; thence North 0°20'11" West 526.0 feet; thence South 89°38' West 30.0 feet; thence North 0°20'11" West 796.0 feet to the place of beginning, containint 14.56 acres, in Lewis County, Washington

That part of the southwest quarter of the northwest quarter of Section 13, Township 13 North, Range 2 West, W. M., as follows:
Beginning at the intersection of the southwesterly line of Old Pacific Highway and the south line of the southwest quarter of the northwest quarter of said Section 13; thence northwesterly along the southerly line of said Highway 872.7 feet to the True point of Beginning; thence northwesterly along said highway 75 feet; thence south 47°33' west at right angles to said highway 300 feet; thence southeasterly parallel with said Highway 75 feet; thence north 47°33' east 300 feet to the True Point of Beginning.

Tract 3: A part of the southwest quarter of the Northwest quarter (SW¼ NW¼) of section thirteen (13) and of the southeast quarter of the Northeast quarter (SE¼ NE¼) of section fourteen (14), township thirteen (13) North Range two (2) West of the Willamette Meridian, described as follows: Beginning at the intersection of the Westerly line of the Old Pacific Highway and the south line of the Southwest quarter of the Northwest quarter (SW¼ NW¼) of said section thirteen (13), thence Northwesterly along said Highway 672.7 feet to the TRUE PLACE OF BEGINNING; thence south 47 degrees 33' West at right angles to said highway 125 feet; thence Northwesterly, parallel to said highway, 203 feet; thence Northeasterly at right angles to said highway 296 feet; thence Southeasterly parallel to said highway, 100 feet; thence Northeasterly at right angles to said highway 100 feet to the Southwesterly line of said highway; thence Southeasterly along said highway 100 feet to the TRUE PLACE OF BEGINNING.
Lewis County Washington

BLEED THROUGH

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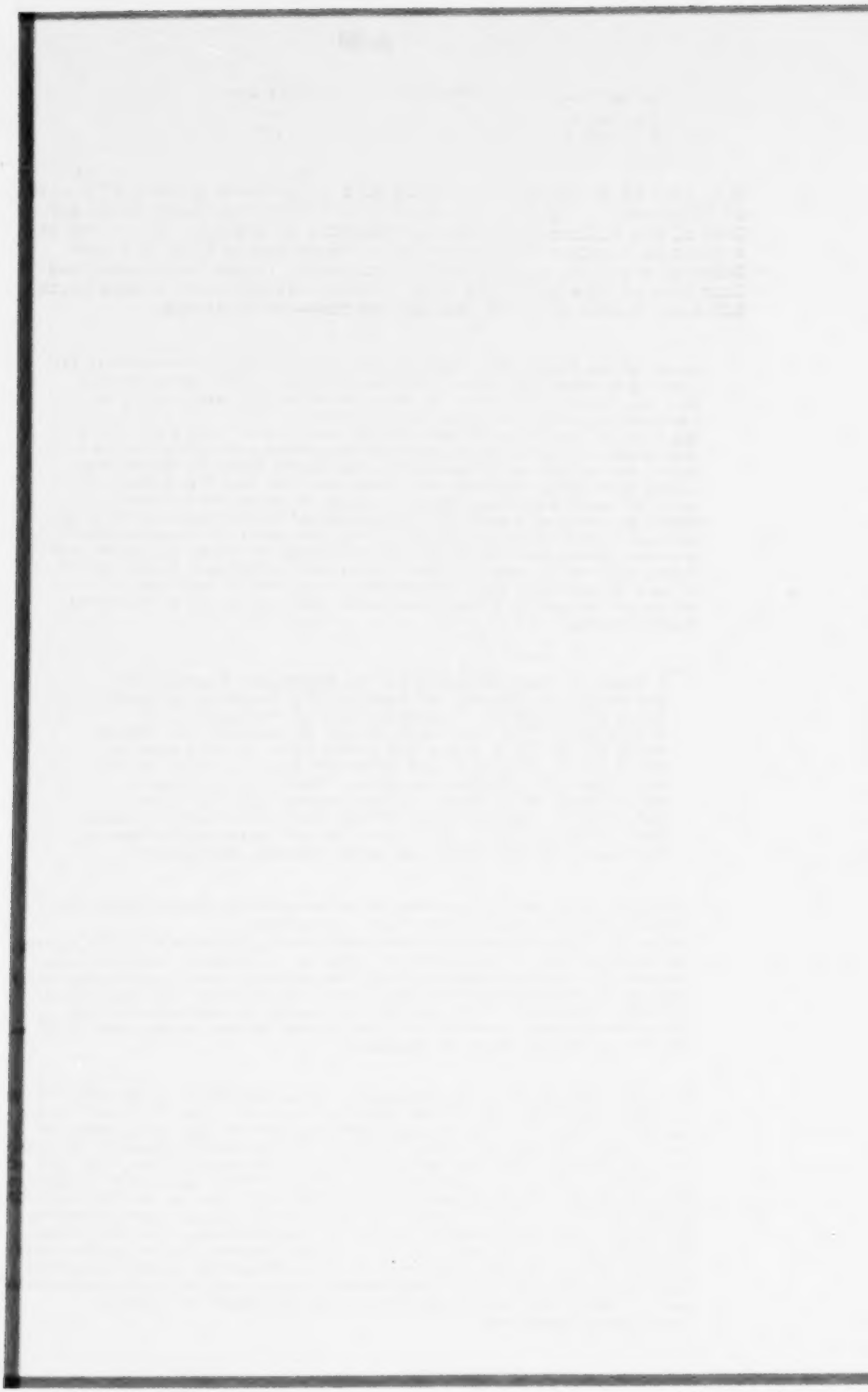

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That Part of the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W. M., described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the South line of the Southwest quarter of the Northwest quarter of said Section 13; thence Northwesterly along the Southerly line of said Highway 972.7 feet to the Northwesterly line of a private road; thence South 47° 33' West at right angles to said Highway 100 feet to the true point of beginning; thence continuing South 47° 33' West 93 and two-thirds feet; thence Northwesterly parallel with said Highway 103 feet; thence North 47° 33' East 93 and two-thirds feet; thence Southeasterly parallel with said Highway 108 feet to the true point of beginning,

TOGETHER with an undivided 1/7 interest in and to that certain private road in the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., and the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M. more particularly described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the South line of the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., thence Northwesterly along said Highway 947.7 feet to the true point of beginning; thence South 47° 33' West at right angles to said Highway 316 feet; thence along a curve to the right, the radius of which is 25 feet through a central angle of 270° a distance of 117.81 feet; thence North 47° 33' East 209 feet to a point on the Southerly line of said highway, thence Southeasterly along said highway 25 feet to the true point of beginning.

AND ALSO EXCEPTING, the following:

That part of the Southwest quarter of the Northwest quarter of Section 13 and of the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M., in Lewis County, Washington, described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway, and the south line of the Southwest quarter of the Northwest quarter of said Section 13; thence Northwesterly along the southerly line of said Highway 972.7 feet to the Northwesterly line of a private road; thence south 47°33' West at right angles to said Highway 316 feet to the True Point of Beginning; thence continuing south 47°33' West 100 feet; thence Southeasterly parallel with said Highway 100 feet; thence north 47°33' East 100 feet; thence Northwesterly parallel with said Highway 100 feet to the True Point of Beginning. EXCEPT all that portion of said premises which lies within the boundary of a circle the radius of which is 25 feet and the center of which is coincident with the above mentioned true point of beginning, the arc of which extends entirely across the most northerly corner of said premises. TOGETHER WITH an undivided one-seventh interest in and to that certain private road in the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., and the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M., more particularly described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the south line of the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., thence Northwesterly along said highway 947.7 feet to the True Point of Beginning; thence south 47°33' West at right angles to said highway 316 feet; thence along a curve to the right, the radius of which is 25 feet, through a central angle of 270° a distance of 117.81 feet; thence north 47°33' East 209 feet to a point on the southerly line of said highway; thence Southeasterly along said highway 25 feet to the True Point of Beginning.

Dated at Chehalis, Washington, this 16th day of April, 1971.

WILLIAM M. WEBSTER, Sheriff

By _____

BLEED THROUGH

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Ext. E

APPENDIX I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, a Washington corporation, Plaintiff,	)	No. 30510
vs.	)	SHERIFF'S RETURN UPON
NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, Defendant.	)	ATTACHMENT OF REAL PROPERTY

REC'D & FILED
LEWIS COUNTY, WASH.
SUPERIOR COURT
MAY 26 1971
MARGARET J. DONALDSON, Clerk
By _____

STATE OF WASHINGTON)
) SS
COUNTY OF LEWIS)

I, William H. Wiester, Sheriff of Lewis County, State of Washington, do hereby certify that I received the annexed Writ of Attachment on the 14th day of April, 1971; that at the request of the attorneys for the plaintiff in the action in said writ, on the 16th day of April, 1971, I duly levied upon and attached all of the right, title and interest of the defendant, Northwest Homes of Chehalis, Inc., a Washington corporation, in said writ named, in and to the following described real property, situated in Lewis County, State of Washington, and particularly described as follows, to-wit:

Lots 2, 3, 4, 5, (Except the southerly 90 feet of Lot 5), 6, 7, 8, 9 and 12, Block 1,
Lots 1, 5, 6, 9, 10, 11 and 12, Block 2,
Olympic Addition, as per plat recorded in volume 5 of plats, pages 33 and 34, records of Lewis County, Washington.

Lots eight (8) and nine (9) block seven (7), SCHEMEL'S ADDITION to the City of Chehalis, in Lewis County, Washington.

That part of the North half of the Northeast quarter of Section 13, Township 12 North, Range 2 East, W.M., in Lewis County, Washington, described as follows:

Beginning at the Southeast corner of said Subdivision; thence North along the Section line, 69.9 feet to the Northerly line of Primary State Highway No. 5; thence South 88° 53' West [illegible] feet; thence North 0° 17' West 70 feet to the true point of beginning; thence continuing North 0° 17' West 70 feet; thence North 88° 53' East 105 feet; thence South 0° 17' East 70 feet; thence South 88° 53' West 105 feet to the true point of beginning.

TOGETHER WITH an easement for ingress and egress described as follows: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter; thence North along the Section line 69.9 feet to the Northerly line of Primary State Highway No. 5; thence South 88° 53' West [illegible] feet; thence North 0° 17' East [illegible] feet; thence South 88° 53' West 25 feet; thence South 0° 17' East 140 feet; thence North 88° 53' East 25 feet to the point of beginning.

That part of the north half of the northeast quarter of Section 13, Township 12 North, Range 2 East, W.M., in Lewis County, Washington, described as follows: Beginning at a point on the northerly line of Primary State Highway No. 5, 69.9 feet north of the southeast corner of the northeast quarter of the northeast quarter of said Section; thence south 88°53' west along said northerly line [illegible] feet; thence north 0°17' west 140 feet to the true point of beginning; thence south 88°53' west 105 feet; thence north 0°17' west 70 feet; thence north 88°53' east 105 feet; thence south 0°17' east 70 feet to the true point of beginning. TOGETHER WITH an easement for ingress and egress over the following described tract: Beginning at the intersection of the east line of said Section and the north line of Primary State Highway No. 5; thence south 88°53' west along said highway line 1219.8 feet to the true point of beginning; thence north 0°17' west 190 feet; thence south 88°53' west 25 feet; thence south 0°17' east 190 feet to the north line of said Highway; thence north 88°53' east 25 feet to the true point of beginning.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 88° 53' West along said North line 1219.8 feet to the True Place of Beginning; thence North 0° 17' West 240 feet; thence North 88° 53' East 130 feet; thence South 0° 17' East 240 feet to said North line; thence South 88° 53' West 130 feet to the True Place of Beginning.

SUBJECT TO:

1. Perpetual easement reserved by Rickard Russell and Rose Russell, husband and wife, their heirs and assigns, to cross and recross the North 30 feet of the above tract.

2. Transmission line easement in the United States of America recorded in Volume 321 of Deeds, page 359, records of the Auditor of Lewis County, Washington.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 88° 53' West along said northerly line 1059.8 feet to the True Place of Beginning; thence North 0° 17' West 210 feet; thence North 88° 53' East 260 feet; thence South 0° 17' East 210 feet to said North line; thence South 88° 53' West 260 feet to the True Place of Beginning.

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter (NE¼ NE¼) of Section thirteen (13), Township twelve (12) North, Range two (2) East of the Willamette Meridian; thence North along the section line 69.9 feet to the northerly line of Primary State Highway No. 5; thence South 88° 53' West along said North line 1349.8 feet to the True Place of Beginning; thence North 0° 17' West 240 feet; thence North 88° 53' East 130 feet; thence South 0° 17' East 240 feet to the North line of said Highway; thence South 88° 53' West 130 feet to the True Place of Beginning.

SUBJECT TO transmission line easement in the United States of America recorded in Volume 321 of Deeds, page 339, records of the Auditor of Lewis County, Washington.

SUBJECT TO perpetual easement of Richard Russell and Rose Russell, husband and wife, their heirs, successors and assigns to cross and recross the North 30 feet of the above tract.

Commencing at a point on the north line of the Centralia-Alaska Land Company's Acre Tracts, which point is 530 feet east of the northwest corner of said Lot, and running; thence east along the north line of said Lots 7 and 8, of said Centralia Boulevard Land Co. Co.'s Acre Tracts, 100 feet, thence south parallel with the west line of said Lot 7, 165 feet; thence west parallel with the north line of said Lots 7 and 8, 100 feet; thence north 165 feet to the place of beginning, being part of Lots 7 and 8, Centralia Boulevard Land Company's Acre Tracts, in Lewis County, Washington.

That part of the north half of Tracts Seven (7) and Eight (8) of CENTRALIA BOULEVARD LAND COMPANY'S ACRE TRACTS, in Lewis County, Washington, described as follows: Beginning at the northwest corner of said Tract 7; thence south along the west line thereof, 165 feet; thence east parallel with the north line of said Tract 7, 317 feet; thence south parallel with the west line of said Tract 7, 331.7 feet, more or less, to the south line of said north half of said Tract 7; thence east parallel with the north line of said Tracts 7 and 8, to a point 190 feet east of the west line of said Tract 8; thence north parallel with the west line of Tract 8 to the north line thereof; thence west along the north line of said Tracts 7 and 8, to the point of beginning. EXCEPT: Beginning at a point on the north line of said Tract 7, 103.4 feet east of the northwest corner thereof; thence east along said north line 105.8 feet; thence south parallel with the west line of said Tract 7, 165 feet; thence west parallel with the north line of said Tract, 105.8 feet; thence north 165 feet to the point of beginning, and EXCEPT: Beginning at a point on the north line of said Tract 7, 510 feet east of the northwest corner thereof; thence east on the north line of Tracts 7 and 8, 100 feet; thence south parallel with the west line of Tract 7, 165 feet; thence west parallel with the north line of said Tracts 7 and 8, 100 feet; thence north 165 feet to the point of beginning; except easements and reservations, if any, of record; TOGETHER with such water rights as are owned by the sellers and that are applicable to the above described property, under the Certificate of Ground Water Rights dated Aug. 12, 1954, filed Aug. 15, 1954, as Auditor's File #514344 and recorded in Volume 30 of Misc. Records, page 103, Records of Lewis County, Washington.

Lot 8 and Lot 9, Block 7, [illegible] to the City of Chehalis.

That part of Government Lot Three (3) in Section Thirteen (13), Township Fourteen (14) North, Range Two (2) West of the Willamette Meridian, in Lewis County, Washington, described as follows: Beginning at the Northeast corner of Lot Three (3), Block Five (5) of the Chehalis Addition; thence North 47 degrees 21' East 70 feet to the True Point of Beginning; thence North 39 degrees 21' East parallel with Main Avenue 70 feet; thence South 47 degrees 21' East 100 feet; thence South 39 degrees 21' West 70 feet to the True Point of Beginning, which parcel is also commonly known as the plat of W. Tice's First Addition as Lot Two (2), Block Two (2), as the same appears on the Lewis County Tax Roll as such.

(Lewis County, Washington)

A part of the Northeast quarter of the Northwest quarter (NE¼ NW¼) of Section Thirteen (13), Township Fourteen (14) North, Range Two (2) West of the Willamette Meridian, described as follows: Commencing at the Southeast corner of said Northeast quarter of the Northwest quarter (NE¼ NW¼); thence North along the East line of said Northeast quarter of the Northwest quarter (NE¼ NW¼) 330 feet; thence West 190 feet; thence South parallel to the said East line to the Weyerhaeuser right of way described in that certain easement dated March 3, 1939, recorded in Book 400 of Deeds, page 330, records of Lewis County Auditor; thence Southeasterly along the Northerly line of said right of way to the point of

Lot five (5), Block one (1), Parkmont Land Company's First Addition to the City of Chehalis, excepting therefrom the North One (1) foot located in Lewis County, Washington.

Lot thirteen (13), Block one (1), Richards's Acre Addition to the City of Chehalis, Less the North Sixty (60) feet of the East One Hundred twenty (120) feet,

Subject to easement for sewer pipe line granted to the City of Chehalis, a municipal corporation, by instrument recorded February 16, 1 21, in Volume 2.) of Deeds, page 221, under Auditor's File No. 1

The South 25 feet of Lot 11, Block 1, Richards's Acre Addition to Chehalis, as recorded in Volume 1 of Plats, Page 1, in Lewis County, Washington, Except the North 1 . feet thereof.
Also, Lot 12, Block 1, Richards's Acre Addition to Chehalis, Except the South 25 feet of the East 200 feet and Except the North 25 feet of the East 200 feet.

Lot seven (7), Block one (1), Richards's Acre Addition to the City of Chehalis.

The south 200 feet of even width of Lot Seven (7), Block One (1), Richards' Acre Tracts, Lewis County, Washington, said; therefrom an (1), South Pacific Railway Company, Deed, to which the seller refers title and plats to record from the site.

That portion of Lot 7 of Chehalis Parkmont Land Company's Plat Tracts, in Lewis County, Washington, described as follows:

Beginning at the southeast corner of Lot 7; thence south along the east line of Farm Road 135 feet; thence west 103.4 feet; thence north 135 feet, more or less, to the south line of Division Avenue; thence east 103.4 feet to the point of beginning.

A part of the Northeast quarter of the Southwest quarter of Section thirteen (13), Township thirteen (13) North, Range two (2) West of the Willamette Meridian, described as follows:

Beginning at a point on the Southerly line of the Pacific Highway, 316.0 feet West of the Northeast corner of said Subdivision; thence South 43° East, along said Highway, 80 feet; thence South 47° West, 140 feet; thence North 43° West, 215 feet; thence East 200 feet to the Place of Beginning, Except the North 25 feet thereof.

A part of Government Lot 7, being the fractional southeast quarter of the southeast quarter of Section 9, Township 13 north, range 9 east, W. M., in Lewis County, Washington, described as follows:

Beginning at the southeast corner of said Lot 7; thence east, along the south line of said Lot 7, 417.4 feet; thence north 208.7 feet; thence west on a line parallel to said south line 417.4 feet; thence south 208.7 feet to the place of beginning.

Lots one (1) and two (2), Block three (3) Parkmont Land Co. Plat, together with that portion of the vacated alley between Lot one (1) and Lots seven (7) and eight (8) attaching to said Lot 1 by operation of law, or otherwise.

Lots seven (7) and eight (8), Block three (3), Parkmont Additions.

A part of the Northeast quarter of the Southeast quarter of Section 22, Township 13, North, Range 9 East, W.M., in Lewis County, Washington, described as follows:
Beginning at a point 651.1 feet North and 30 feet East of the Southwest corner of the Town of Lewis (now Parkmont) running East 117 feet; thence South 100 feet; thence West 113 feet; thence North 100 feet to the Place of Beginning.

Lot fourteen (14), Block two (2), Richards's Subdivision of Block six (6)

A tract of land in the Southwest quarter (SW¼) of Section thirteen (13), Township thirteen (13) North, Range one (1) East of the Willamette Meridian, described as follows: Commencing on the West line of said Section thirteen (13) where said line is intersected by the center line of Secondary State Highway 5R; thence North 42° 07' East along said center line 635 feet more or less to Engineers Station 247-00; thence at right angles Southeasterly 30 feet; thence Northeasterly parallel to said center line 400 feet to the TRUE POINT OF BEGINNING, said point being the most Northerly corner of a tract of land conveyed to the State of Washington by deed recorded in Book 255 of Deeds, page 599; thence Southeasterly, at right angles to the center line of said highway 200 feet; thence at right angles Northeasterly, parallel to the center line of said highway to the South Fork of the Newaukum River; thence Northerly along said River to the presently existing bridge where Highway 5R crosses the same; thence Westerly and Southwesterly along said highway to the TRUE POINT OF BEGINNING.

All of Block Two (2) [illegible] of Lots Four (4) and Five (5), Block Three (3), Replat of Blocks 4, 5 and 6, Farcuvia. (Lewis County, Washington)

That part of the Southwest quarter of the Southwest quarter (SW¼ SW¼) of Section eleven (11), Township twelve (12) North, Range seven (7) East of the Willamette Meridian, described as follows: Beginning at a point on the East line of the W. A. Young County Road, 200 feet North of the South line of said Subdivision; thence North along the East line of said Road, 100 feet; thence East 150 feet; thence South 100 feet; thence West 150 feet to the Place of Beginning.

A part of the Elkanna Mills Donation Land Claim, in Section Thirty-Three (33) Township Fourteen (14), North, Range Two (2), West, W. M., and in Section Four (4), Township Thirteen (13), North, Range Two (2), West, W. M., in Lewis County, Washington, described as follows:
Beginning at a point on the north line of said Donation Land Claim, 30.10 chains east of the northwest corner thereof; thence east 692.43 feet to a point, thence south 42°12' west 2270.4 feet to the former Pacific Highway; thence north 49°30' west 178 feet; thence north 66° west 213.12 feet, thence north 38° east 1913.2 feet, more or less, to the point of beginning.
EXCEPT Beginning at a point 2673.73 feet east of the northwest corner of said Donation Land Claim, which point is the northeast corner of the above described premises; thence south 42°12' west 2270.4 feet to the former Pacific Highway thence north 49°30' west 82.5 feet, thence north 42°12' east to the north line of said Donation Land Claim; thence east to the point of beginning.
AND EXCEPT any portion thereof lying within the right of way of the former Pacific Highway.

A tract of land situated in the Northwest Quarter of the Northwest Quarter of Section 10, Township 13 North, Range 2 West of WM. and described as follows:
BEGINNING at the Northwest corner of Section 10; thence North 89°38' East along the North line of said section 491.1 feet; thence South 0°20'11" East parallel to the West line of said Section 1024.0 feet; thence South 89°38' West 461.1 feet; thence North 0°20'11" West 520.0 feet; thence South 89°38' West 30.0 feet; thence North 0°20'11" West 735.0 feet to the place of beginning, containing 14.56 acres, in Lewis County, Washington

That part of the southwest quarter of the northwest quarter of Section 13, Township 13 North, Range 2 West, W. M., as follows:
Beginning at the intersection of the southwesterly line of Old Pacific Highway and the south line of the southwest quarter of the northwest quarter of said Section 13; thence northwesterly along the southerly line of said highway 672.7 feet to the True point of Beginning; thence northwesterly along said highway 75 feet; thence south 47°33' west at right angles to said highway 300 feet; thence southeasterly parallel with said highway 75 feet; thence north 47°33' east 300 feet to the True Point of Beginning.

BLEED THROUGH

That is a part of the Southwest quarter of the Northwest quarter (SW¼ NW¼) of Section Thirteen (13) and of the Northwest quarter of the Northwest quarter (NW¼ NW¼) of Section Fourteen (14), Township Thirteen (13) North, Range Two (2) East of the Willamette Meridian, described as follows: Beginning at the intersection of the Southerly line of the Old Pacific Highway and the South line of the Southwest quarter of the Northwest quarter (SW¼ NW¼) of said Section Thirteen (13), thence Northwesterly along said Highway 972.7 feet to the TRUE POINT OF BEGINNING; thence South 47° 33' West at right angles to said Highway 120 feet; thence Northwesterly parallel to said Highway, 103 feet; thence North 47° 33' East 93 and two-thirds (93⅔) feet; thence Northeasterly at right angles to said Highway 103 feet; thence Southeasterly parallel to said Highway, 103 feet; thence Northeasterly at right angles to said Highway 120 feet to the Southwesterly line of said Highway; thence Southeasterly along said Highway 120 feet to the TRUE POINT OF BEGINNING.
Lewis County, Washington

EXCEPT, the following:

That part of the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W. M., described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the South line of the Southwest quarter of the Northwest quarter of said Section 13; thence Northwesterly along the Southerly line of said Highway 972.7 feet to the Northwesterly line of a private road; thence South 47° 33' West at right angles to said highway 120 feet to the true point of beginning; thence continuing South 47° 33' West 93 and two-thirds feet; thence Northwesterly parallel with said highway 103 feet; thence North 47° 33' East 93 and two-thirds feet; thence Southeasterly parallel with said highway 103 feet to the true point of beginning,

TOGETHER with an undivided 1/7 interest in and to that certain private road in the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., and the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M. more particularly described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the South line of the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., thence Northwesterly along said highway 947.7 feet to the true point of beginning;

thence South 17° 33' West at right angles to said highway 215 feet; thence along a curve to the right, the radius of which is 25 feet through a central angle of 270° a distance of 117.81 feet; thence North 47° 33' East 109 feet to a point on the Southerly line of said highway, thence Southeasterly along said highway 25 feet to the true point of beginning.

AND ALSO EXCEPTING, the following:

That part of the Southwest quarter of the Northwest quarter of Section 13 and of the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M., in Lewis County, Washington, described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway, and the south line of the Southwest quarter of the Northwest quarter of said Section 13; thence Northwesterly along the southerly line of said Highway 972.7 feet to the Northwesterly line of a private road; thence south 47°33' West at right angles to said highway 120 feet to the True Point of Beginning; thence continuing south 47°33' West 103 feet; thence Southeasterly parallel with said Highway 103 feet; thence north 47°33' East 103 feet, thence Northwesterly, parallel with said highway 103 feet to the True Point of Beginning. EXCEPT all that portion of said premises which lies within the boundary of a circle the radius of which is 25 feet and the center of which is coincident with the above mentioned true point of beginning, the arc of which extends entirely across the most northerly corner of said premises. TOGETHER WITH an undivided one-seventh interest in and to that certain private road in the Southwest quarter of the Northwest quarter of Section 13, Township 13 North, Range 2 West, W.M., and the Southeast quarter of the Northeast quarter of Section 14, Township 13 North, Range 2 West, W.M., more particularly described as follows: Beginning at the intersection of the Southwesterly line of the Old Pacific Highway and the south line of the Southwest quarter of the Northwest quarter of Section 13,

Township 13 North, Range 2 West, W.M., thence Northwesterly along said highway 947.7 feet to the True Point of Beginning; thence South 47°33' West at right angles to said highway 215 feet; thence along a curve to the right, the radius of which is 25 feet, [illegible]

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COPY PRINTED CLOSE TO EDGE

by filing in the office of the Auditor of Lewis County, Washington, a true copy of said Writ of Attachment, together with a notice in writing stating that I levied upon and attached the real property in said notice described.

WHEREFORE, I return said Writ of Attachment, with return of my doings thereunder, as above set forth, to the Clerk of the Court named therein.

Dated this 19th day of April, 1971.

WILLIAM H. WEBSTER, Sheriff

By _____

VERA ROBERTS, Deputy

SHERIFF'S FEES:

Levy	3.00
Auditor's Filing Fee	2.00
Filing with Auditor	2.00
Service	4.00
Mileage	.50
Copies	5.00
Return	2.00
TOTAL:	$18.60

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Supreme Court, U. S.
FILED
FEB 23 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1144

THOMAS HANSEN, Receiver of NORTHWEST HOMES OF CHEHALIS, INC.,
Petitioner,

v.

WEYERHAEUSER COMPANY,
Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI (Filed February 12, 1976) APPENDICES D-I

CHARLES R. EKBERG
Attorney for Petitioner

LANE, POWELL, MOSS & MILLER
Of Counsel

Office and Post Office Address:
1700 Washington Bldg.
Seattle, Washington 98101

CRAFTSMAN ◆ MET PRESS ◆ SEATTLE, WASHINGTON

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF LEWIS

WEYERHAEUSER COMPANY, a Washington corporation, *Plaintiff*, v. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Defendant*.	No. 30510 COMPLAINT FOR GOODS SOLD AND DELIVERED

COMES NOW your plaintiff, WEYERHAEUSER COMPANY, and alleges as follows:

I.

The plaintiff, WEYERHAEUSER COMPANY, is a Washington corporation whose principal place of business is in the Tacoma Building at 11th and A Streets in Tacoma, Washington. Its mailing address is Weyerhaeuser Company, Tacoma, Washington 98401. Its telephone number is (206) 383-3361.

II.

The defendant herein, NORTHWEST HOMES OF CHEHALIS, INC., is a Washington corporation with a principal place of business at 2800 South Market, Chehalis, Washington. Its mailing address is P. O. Box 478, Chehalis, Washington 98532. Its telephone number is (206) 748-4429.

HELMUT WALLENFELS
Attorney at Law
1210 Tacoma Bldg.
Tacoma, Washington 98402
(206) 383-3361, Ext. 1149

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III.

Defendant owes plaintiff EIGHTY-EIGHT THOUSAND THIRTY-NINE DOLLARS and TWENTY-THREE CENTS ($88,039.23) for goods sold and delivered by plaintiff to defendant in 1970.

IV.

In addition, defendant owes plaintiff, as of the date of this complaint, FOUR THOUSAND FOUR HUNDRED SEVEN DOLLARS and THIRTY-TWO CENTS ($4,407.32) in delinquency charges which accrued by reason of defendant's failure seasonably to pay plaintiff the purchase price of the aforementioned goods.

WHEREFORE, plaintiff demands judgment against defendant for the sum of NINETY-TWO THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS and FIFTY-FIVE CENTS ($92,446.55), such further delinquency charges as may have accrued by the time judgment is entered herein, and costs.

DATED this 19th day of February, 1971.

s/ HELMUT WALLENFELS

Helmut Wallenfels
Attorney for plaintiff,
WEYERHAEUSER COMPANY
Room 1210, Tacoma Bldg.
Tacoma, Washington 98402
(206) 383-3361, Ext. 1149

APPENDIX E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, *Plaintiff*, v. NORTHWEST HOMES OF CHEHALIS, INC., *Defendant*.	No. 30510 ANSWER TO PLAINTIFFS' COMPLAINT

THE DEFENDANT in the above entitled action does now answer Plaintiffs' complaint on file herein, and by way of denial alleges as follows:

I

Defendant admits the allegations contained in Paragraph I of plaintiffs' complaint.

II

Defendant admits the allegations contained in Paragraph II of plaintiffs' complaint.

III

The defendant admits that plaintiff has sold and delivered goods to the defendant during the year of 1970, but defendant emphatically denies that it owes the plaintiff $88,039.23 for such goods sold and delivered.

IV

The defendant denies the allegations contained in Paragraph IV of plaintiffs' (sic) complaint.

WHEREFORE, defendant having fully answered and denied the material allegations in plaintiffs' complaint, it does now pray that plaintiffs' complaint be dismissed herein and that defendant be awarded its costs and disbursements incurred in defense of this action.

DATED THIS 25th day of March, 1971.

KELLEHER & EAST

By:.....

GARY W. EAST
Attorney for Defendant

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APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, a Washington corporation, *Plaintiff*, v. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Defendant*.	No. 30510 AFFIDAVIT FOR ATTACHMENT

Rec'd & Filed Lewis County, Wash. Superior Court
Apr. 11, 1971; MARGARET J. DONALDSON, Clerk

STATE OF WASHINGTON }
COUNTY OF LEWIS } ss.

J. D. SEARLE, being first duly sworn on oath, deposes and says: That he is an attorney for the Plaintiff in the above-entitled cause. That the Defendant, Northwest Homes of Chehalis, Inc., is indebted to the Plaintiff herein in the sum of $92,446.55 plus interest, late charges, and costs over and above all just credits and offsets. That he makes this affidavit to secure the issuance of a Writ of Attachment and that such writ is not sought and the action is not brought to hinder, delay, or defraud any creditor of said Defendant.

Affiant further states:

1. That the Defendant has, or is about to assign, secrete, or dispose of property with the intent to delay or defraud its creditors.

2. That the Defendant is about to convert its property, or a part thereof, into money for the purpose of placing it beyond the reach of its creditors.

3. That the object for which this action is brought is to recover on an express contract.

s/ J. D. SEARLE

.....

Subscribed and sworn to before me this 14 day of April, 1971.

s/ LORRAINE REDCLIFFE

.....

Notary Public in and for the State of Washington, residing at Chehalis.

APPENDIX G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, a Washington corporation, *Plaintiff*, v. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Defendant*.	No. 30510 WRIT OF ATTACHMENT [SEAL]

STATE OF WASHINGTON TO THE SHERIFF OF LEWIS COUNTY, GREETINGS:

WHEREAS, a civil action, as above entitled, has been commenced in the aforesaid Court by the Plaintiff for recovery from the Defendant therein, in the sum of $92,446.55 plus interest, late charges, and court costs, and the necessary affidavit and undertaking therein has been filed as required by law.

NOW, THEREFORE, you are hereby commanded that you attach and take all of the property of said Defendant within your County, not exempt from execution, or so much thereof as may be sufficient as may be sufficient [sic] to satisfy said Plaintiff's demand, the amount thereof being as above stated, together with costs and expenses, and safely keep the same in your possession until the further order of the Court respecting the same, or it shall have been otherwise discharged according to law.

OF THIS WRIT MAKE LEGAL SERVICE AND RETURN.

Witness, the Honorable D. J. Cunningham, Judge of the Superior Court, and the seal thereof, this 14th day of April, 1971.

MARGARET J. DONALDSON,
Clerk of Court

By: s/ANNE LINDEMAN
Deputy

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APPENDIX H

WEYERHAEUSER CORPORATION, a Washington corporation, *Plaintiff,* v. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Defendant.*	Cause No. 30510 NOTICE OF ATTACHMENT OF REAL PROPERTY

Rec'd & Filed Lewis County, Wash. Superior Court
May 26, 1971; MARGARET J. DONALDSON, Clerk

STATE OF WASHINGTON }
COUNTY OF LEWIS }

Notice is hereby given that under and by virtue of a Writ of Attachment issued out of the Superior Court of Lewis, County and State of Washington, of which the annexed writ is a true copy, I have this day attached all the right, title, claim and interest of NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, Defendant, of, in and to the following described real estate in Lewis County, State of Washington, standing on the records of Lewis County in the name of Northwest Homes of Chehalis, Inc., a Washington corporation, and particularly described as follows, to wit:

[Legal descriptions
appearing on pp. A-27 through A-31 omitted]

Dated at Chehalis, Washington, this 16th day of April, 1971.

WILLIAM H. WIESTER, Sheriff
By s/VERA ROBERTS
VERA ROBERTS, Deputy Sheriff

APPENDIX I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

WEYERHAEUSER COMPANY, a Washington corporation, *Plaintiff*, v. NORTHWEST HOMES OF CHEHALIS, INC., a Washington corporation, *Defendant*.	No. 30510 SHERIFF'S RETURN UPON ATTACHMENT OF REAL PROPERTY

Rec'd & Filed Lewis County, Wash. Superior Court
May 26, 1971; MARGARET J. DONALDSON, Clerk

STATE OF WASHINGTON }
COUNTY OF LEWIS } ss.

I, William H. Wiester, Sheriff of Lewis County, State of Washington, do hereby certify that I received the annexed Writ of Attachment on the 14th day of April, 1971; that at the request of the attorneys for the plaintiff in the action in said writ, on the 16th day of April, 1971, I duly levied upon and attached all of the right, title and interest of the defendant, Northwest Homes of Chehalis, Inc., a Washington corporation, in said writ named, in and to the following described real property, situated in Lewis County, State of Washington, and particularly described as follows, to-wit:

[Legal descriptions omitted].

by filing in the office of the Auditor of Lewis County, Washington, a true copy of said Writ of Attachment, together with a notice in writing stating that I levied upon and attached the real property in said notice described.

WHEREFORE, I return said Writ of Attachment, with

BLEED THROUGH

return of my doings thereunder, as above set forth, to the Clerk of the Court named therein.

Dated this 19th day of April, 1971.

WILLIAM H. WIESTER, Sheriff

By s/VERA ROBERTS

VERA ROBERTS, Deputy

SHERIFF'S FEES:

Levy	3.00
Auditor's Filing Fee	2.00
Filing with Auditor	2.00
Service	4.00
Mileage	.60
Copies	5.00
Return	2.00
TOTAL:	$18.60

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Supreme Court, U. S.
FILED
MAR 9 1976
MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1975

No. 75-1144

In Re Northwest Homes of Chehalis, Inc.,
Debtor,

Thomas Hansen, Receiver of Northwest Homes of Chehalis, Inc.,
Petitioner,
v.
Weyerhaeuser Company,
Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

Helmut Wallenfels
Attorney for Respondent

Office and Post Office Address:
Law Department
Weyerhaeuser Company
Tacoma, Wash. 98401
(206) 924-3771

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IN THE
Supreme Court of the United States

October Term, 1975

No. 75-1144

In Re Northwest Homes of Chehalis, Inc.,
Debtor,

Thomas Hansen, Receiver of Northwest
Homes of Chehalis, Inc.,
Petitioner,

v.

Weyerhaeuser Company,
Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The decision which Petitioner is asking this Court to review has been reported as In the Matter of Northwest Homes of Chehalis, Inc., 526 F.2d 505 (9th Cir. 1975).

ARGUMENT

I.
This Case Raises No Question of Federal Law Which Has Not Already Been Settled By This Court

A. *In Light of Spielman-Fond, Inc. v. Hanson's, Inc., 417 U.S. 901 (1974), a Reexamination of McKay v. McInnes, 279 U.S. 820 (1929), Is Not Necessary.*

Petitioner's argument on the merits is that an attachment of real estate, although nonpossessory and therefore not disturbing the owner's use or possession, is nevertheless a "taking" of an important property right because it prevents the owner, during the pendency of the main action against him, from selling or mortgaging the attached land for the same amount of money which he could get if there were no attachment lien; hence the land can be attached only after the owner has been afforded an opportunity for an adversary hearing on whether an attachment is justified.

The last time this view was urged here, this Court summarily affirmed a holding that the "taking" resulting from an attachment of land does not rise to the magnitude of an unconstitutional deprivation. McKay v. McInnes, 279 U.S. 820 (1929), aff'g McInnes v. McKay, 127 Me. 110, 141 A. 699 (1928). Invoking that portion of this Court's Rule 19(1)(b) which indicates that certiorari may be granted "where a court of appeals . . . has decided an important question of federal law which has not been, but

should be, settled by this Court . . .", Petitioner urges that McKay v. McInnes be reexamined in light of this Court's decisions in Sniadach v. Family Finance Corporation, 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975), which, while not invalidating nonpossessory pre-judgment creditors' remedies like attachment liens, are said to express a view of Due Process which is hostile to them.

The relevant part of Rule 19(1)(b) requires not only that Petitioner raise an important federal question; it also requires that the question be one which has not been settled by this Court. The federal question raised by Petitioner was settled by this Court a short time ago in Spielman-Fond, Inc. v. Hanson's, Inc., 417 U.S. 901 (May 28, 1974). While that case upheld a mechanic's lien rather than an attachment lien, the two types of liens are indistinguishable for Due Process purposes in that both can be created without a prior adversary hearing, and both produce the same "deprivation," namely an inability to sell or mortgage the land encumbered by them for the same amount of money which could be obtained in their absence. It follows that Spielman-Fond settled the question which Petitioner is seeking to raise, and that the Court of Appeals was right in viewing it as controlling precedent.

Recognizing the relevance of Spielman-Fond, Petitioner implies that this case differs from it in one particular which might justify a distinction: here, the attaching creditor had no

pre-existing legal interest in the attached land, whereas a mechanic's lien claimant "arguably . . . has a nexus with the property liened." Petition, p. 10. The point has no merit. A mechanic's lien claimant has usually no pre-existing legal interest in the land against which he has filed his lien, and the mechanic's lien law upheld in Spielman-Fond neither assumes nor requires that he have such an interest. The "nexus" referred to by Petitioner consists solely of the fact that the mechanic's lien claimant has performed some kind of work (usually construction work) on the land subject to the lien, and while this has a bearing on whether he is entitled to file that kind of lien, it is irrelevant to the question whether a mechanic's lien, if and when duly filed, results in a "taking" of that land for Due Process purposes. This is undoubtedly the reason why neither the lower court's opinion in Spielman-Fond nor this Court's affirmance of it give any indication that this "nexus" had any influence on the result.

B. The Adequacy of the Post-Attachment Remedy Afforded to a Landowner by Washington Law is Irrelevant. In any Event, the Remedy Is Adequate.

In the last two paragraphs of its opinion in this case, the Court of Appeals implied that the post-attachment remedy afforded to the owner of attached Washington real estate by RCW 7.12.270 is as adequate as that which was available to the debtor in Mitchell v. W. T. Grant Company, 416 U.S. 600 (1974). Petitioner, disagreeing with this view,

apparently wishes this Court to review the adequacy of that remedy on the ground that it, too, is an important federal question which has not been, but should be, settled by this Court.

We submit that it is not such a question because, for one thing, the post-attachment remedy afforded by RCW 7.12.270 was not the basis of the Court of Appeals' decision. A fair reading of its opinion shows that the two last paragraphs are just dicta. Second, if the Court of Appeals was right in holding that the attachment in this case was not such a "taking" as calls the Due Process clause into operation, the adequacy of that post-attachment remedy is irrelevant. In a case like Mitchell, where there was a true taking because the debtor was physically dispossessed, the immediate availability of an adequate post-seizure remedy may make the difference between Due Process and a denial of Due Process. See Mitchell v. W. T. Grant Company, 416 U.S. 600, 625 (1974), and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 607 (1975). But where, as here, there is no taking of that degree of severity which calls the Due Process clause into operation, the adequacy of any post-taking remedy or, for that matter, of any notice of taking is immaterial since neither is constitutionally required in the first place.

However, a brief reply to Petitioner's criticisms of the Washington procedure may still be appropriate. Petitioner's first and chief objection to it is that it does not require a

notice of attachment to the property owner. Petitioner argues that in the absence of such a notice, he cannot avail himself of the post-attachment remedy afforded by RCW 7.12.270 because he does not know that his real estate has been attached. One answer to this criticism is that it could also be leveled at mechanic's lien laws; typically they do not require that the owner of the property subject to the lien be notified of its filing, yet their constitutionality can no longer be doubted. Spielman-Fond, Inc. v. Hanson's, Inc., 417 U.S. 901 (1974). Furthermore, the Washington procedure gives the property owner at least constructive notice of the attachment in that it requires a recording of the writ of attachment, together with a legal description of the attached property, in the land records of the county in which it is located. RCW 7.12.130(1). Having done that, the sheriff must "return" the writ of attachment, i.e., file it in the court file on the lawsuit to which the attachment is ancillary, together with a certificate of his proceedings. RCW 7.12.300. This comes very close to giving actual notice because under Washington procedure there always is a lawsuit against the owner of the attached property, and any defense attorney worth his salt will check the court file on it at periodic intervals in order to become aware of just such ex parte orders as writs of attachment, among other things.

Petitioner's second criticism of RCW 7.12.270 is that it puts the burden of proving the non-existence of grounds for an attachment on the debtor instead of requiring the attaching creditor to prove

the existence of grounds justifying the attachment.

RCW 7.12.270 allows the debtor to move to discharge the writ of attachment "on the ground that the same was improperly or irregularly issued." His only burden is to inform the Court, by affidavit or otherwise, of the specific impropriety or irregularity which he is attacking. RCW 7.12.280. When the debtor has done that, the attaching creditor must prove the propriety and regularity of the attachment. If he does not, the writ will be discharged. RCW 7.12.290; Bender v. Rinker, 21 Wash. 633, 59 Pac. 503 (1899). The debtor never has to prove or disprove anything.

The post-seizure remedy which was one of the "saving characteristics" of the Louisiana procedure under attack in Mitchell

> ". . .expressly entitled the debtor to an immediate hearing after seizure and to dissolution of the writ absent proof by the creditor of the grounds on which the writ was issued."

North Georgia Finishing, v. Di-Chem, Inc., 419 U.S. 601, 607 (1975). We submit that the Court of Appeals was amply justified in concluding that the Washington procedure under attack in this case has the same "saving characteristic."

II.
The Court of Appeals' Decision Below Is Not In Conflict With That of Any Other Court of Appeals

Petitioner is also urging that this Court grant certiorari in order to resolve a conflict between the decision below and Gunter v. Merchants Warren National Bank, 360 F.Supp. 1085 (D. Me. 1973), Clement v. Four North State Street Corp., 360 F.Supp. 933 (D. N.H. 1973), Bay State Harness Horse Racing and Breeding Association v. PPG Industries, 365 F.Supp. 1299 (D. Mass. 1973) and Terranova v. Avco Financial Services, 396 F.Supp. 1402 (D. Vt. 1975).

It is true enough that the four decisions just cited are in conflict with that of the Court of Appeals below, but what Rule 19(1)(b) requires is a conflict between two courts of appeals, or a court of appeals and this Court. A conflict between a court of appeals decision and that of one or more federal district courts has never, without more, been regarded as an adequate reason for certiorari. A leading text on practi e before this Court, Stern & Gressman, Supreme Court Practice (Fourth Ed. 1969), Sec. 4.8, states flatly:

> "The Supreme Court will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court, whether in the same circuit or in another circuit."

There are indications that the conflict relied upon by Petitioner may soon resolve itself without action by this Court. It will be noticed that three of the four district court decisions in question were rendered in 1973, i.e., before this Court's rulings in Mitchell and Spielman-Fond. The first and most important of these district court decisions, which became the chief authority relied upon by the other three, is Judge Gignoux' opinion in Gunter v. Merchants Warren National Bank, 360 F.Supp. 1085 (D. Me. 1973). But upon learning of Mitchell and Spielman-Fond, Judge Gignoux abandoned the views which he had expressed in Gunter, explaining:

> "Mitchell and Spielman-Fond require the conclusion that the real estate attachment liens in the present case were not obtained in violation of the Due Process clause and therefore were not, as the Bankruptcy Judge held, subject to avoidance by the alleged bankrupt."

The Oronoka, 393 F. Supp. 1311, 1317 (D. Me., March 17, 1975).

Spielman-Fond is still not a very well-known decision. This explains why Terranova v. Avco Financial Services, 396 F.Supp. 1402 (D. Vt. 1975) still follows Gunter; neither Spielman-Fond nor Judge Gignoux' more recent opinion in The Oronoka were called to the court's attention. But as these cases become better known, the other district courts will probably follow Judge Gignoux' lead again

and the conflict relied upon by Petitioner will resolve itself without this Court's intervention.

CONCLUSION

Respondent respectfully submits that the Petition for Certiorari in this case gives no sufficient reasons why this Court should review the Court of Appeals' decision. Respondent suggests that the Petition be denied.

Respectfully submitted,

Helmut Wallenfels

Helmut Wallenfels
Attorney for Respondent

Law Department
Weyerhaeuser Company
Tacoma, Washington 98401
Telephone: (206) 924-3771